Vol. 42 (2d Series) OCTOBER 19, 1973 No. 8

FEDERAL COMMUNICATIONS COMMISSION REPORTS
(42 F.C.C. 2d)

Decisions, Reports, Public Notices, and Other Documents of
the Federal Communications Commission of
the United States

VOLUME 42 (2d Series)

Pages 1011 to 1126

Reported by the Commission

FEDERAL COMMUNICATIONS COMMISSION

DEAN BURCH, Chairman

ROBERT E. LEE
NICHOLAS JOHNSON
H. REX LEE

CHARLOTTE T. REID
RICHARD E. WILEY
BENJAMIN L. HOOKS

UNITED STATES GOVERNMENT PRINTING OFFICE • WASHINGTON, D.C.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402 - on a subscription basis

INDEX

Page

Belo Broadcasting Corp. et al.; dockets Nos. 19744 et al. (F.C.C. 73R-334) 1011

Brannen and Brannen; file No. BPH-8078 (F.C.C. 73-1006) 1020

Buffalo Televents Inc.; file No. CSC-20 (F.C.C. 73-1004) 1025

Carolinas Advertising, Inc.; file No. BR-1595 (F.C.C. 73-989) 1027

Chesapeake-Portsmouth Broadcasting Corp.; docket No. 19787 (F.C.C. 73R-342) 1030

Coastal Electronics Co.; docket No. 19384 (F.C.C. 73R-343) 1032

Coastal Electronics Co.; docket No. 19384 (F.C.C. 72D-38) 1042

Employment Policies and Practices; re inquiry of certain broadcast stations located in Maryland, Virginia, West Virginia, and the District of Columbia 1049

Enchanted Land Broadcasting, Inc.; re notice of apparent liability for forfeiture (F.C.C. 73-955) 1053

Fairness Doctrine Ruling; re complaint by David E. Houskins against Station WOTV 1055

Fairness Doctrine Ruling; re complaint by John Cervase against Station WOR-TV 1058

Fairness Doctrine Ruling; re complaint by National Citizens Committee for Broadcasting against Columbia Broadcasting System 1060

Field Disturbance Sensors; docket No. 19685 (F.C.C. 73-998) 1062

Harbor-Vue Cable TV, Inc.; file No. CAC-1348 (F.C.C. 73-1014) 1067

Heftel Broadcasting-Boston, Inc., et al.; files Nos. BALH-1740 et al. (F.C.C. 73-832) 1072

Heftel Broadcasting-Boston, Inc., et al.; files Nos. BALH-1740 et al. (F.C.C. 73-834) 1076

KOLOB Broadcasting Co., Inc.; file No. BR-4552 (F.C.C. 73-939) 1079

Lopez-Lay, Carlos A.; docket No. 19387 (F.C.C. 73D-41) 1080

Mid New York Broadcasting Corp.; re notice of apparent liability for forfeiture (F.C.C. 73-873) 1088

Midwestern Broadcasting Co. et al.; file No. BALH-1561 (F.C.C. 73-850) 1091

Mobile Repeaters; docket No. 19721 (F.C.C. 73-1001) 1095

NEO Broadcasting Co.; docket No. 19713 (F.C.C. 73D-43) 1100

Personal Attack Ruling; re petition by John Cervase for reconsideration against Station WNET-TV 1104

Personal Attack Ruling; re complaint by Thomas O'Brien against Southern California Broadcasting Co. (KIEV) 1106

Personal Attack Ruling; re complaint by Polish-American Congress, Inc. against American Broadcasting Co 1110

Personal Attack Ruling; re complaint by Massachusetts Black Caucus against Station WNAC-TV 1113

Qualition Aero, Inc.; file No. BR-4223 (F.C.C. 73-972) 1115

Red Lion Broadcasting Co., Inc.; docket No. 18136 (F.C.C. 73R-347) 1116

Staunton Video Corp.; file No. CSR-346 (F.C.C. 73-1005) 1119

Teleprompter Cable Communications Corp.; files Nos. CSR-289 et al. (F.C.C. 73-971) 1122

WNAR, Inc.; docket No. 14952 (F.C.C. 73R-346) 1124

Zipcall and Colgan Communications, Inc.; re request for approval of an Inter-Carrier Operating Agreement 1125

F.C.C. 73R-344

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of BELO BROADCASTING CORP. (WFAA-TV) DALLAS, TEX. For Renewal of Broadcast License	Docket No. 19744 File No. BRCT-33
WADECO, INC., DALLAS, TEX. For Construction Permit for New Television Broadcast Station	Docket No. 19745 File No. BPCT-4453

MEMORANDUM OPINION AND ORDER

(Adopted October 1, 1973; Released October 4, 1973)

BY THE REVIEW BOARD:

1. Now before the Review Board is a petition to enlarge issues, filed June 14, 1973, by Belo Broadcasting Corporation (Belo), requesting the addition of the following issues against WADECO, Inc. (WADECO):

(1) To determine whether WADECO, Inc. has reasonable assurance of being able to secure its proposed antenna site.

(2) To determine whether WADECO, Inc. has reasonable assurance of being able to secure its proposed studio facilities, and, if not, the effect on WADECO, Inc.'s financial qualifications and its ability to effectuate its proposal.

(3) To determine whether WADECO, Inc. can reasonably expect to secure a network affiliation, and, if not, the effect on WADECO, Inc.'s financial qualifications and its ability to effectuate its program proposals.

(4) To determine the efforts made by WADECO, Inc. to ascertain the community needs and interests of the area to be served and the means by which the applicant proposes to meet those needs and interests.

(5) To determine whether WADECO, Inc. misrepresented facts to the Commission in connection with its survey of community leaders.

(6) To determine whether, in light of the evidence adduced under the preceding issues, WADECO, Inc. is qualified to be a licensee of the Commission.[1]

SITE AND STUDIO AVAILABILITY ISSUES

2. Petitioner alleges that WADECO does not have reasonable assurance of the availability of its proposed antenna site, which is speci-

---

[1] The following related pleadings are also before the Board: (1) Broadcast Bureau's comments, filed July 2, 1973; (2) opposition, filed July 2, 1973, by WADECO; (3) erratum, filed July 3, 1973, by WADECO; and (4) reply, filed July 12, 1973, by Belo.

fied as the corner of the candelabra tower now occupied by the antenna of renewal applicant, WFAA-TV. In support thereof, Belo submits the affidavit of Aubrey S. Jenkins, Secretary of Hill Tower, Inc., owner of the proposed site, in which the affiant states that no representative of WADECO has communicated with any of its representatives concerning the use of the tower as a supporting structure for WADECO's proposed television antenna. Noting that the existing licensee, WFAA-TV owns 50% of Hill Tower, Inc., Belo submits the affidavit of Mike Shapiro, officer and director of Belo, in which he avers that no representative of WADECO has communicated with WFAA with respect to future use of the tower, and asserts Belo's continuing right to the use of the antenna site. In support of its request for a studio availability issue, Belo submits an affidavit of Mike Shapiro stating that none of the corners of the intersection specified by WADECO as its studio location, including the present location of WFAA's offices and studios, has been shown to be available to WADECO, and that the applicant has not made any inquiries appropriate to ascertain the availability of any location at that intersection. Finally, Belo contends that since WADECO's financial ability depends upon the availability of studio and transmitter rental property at or less than WADECO's estimated rental, and since WADECO does not have assurance of obtaining the studio or transmitter locations it proposes, a serious question is raised as to the applicant's financial qualifications.

3. In opposition, WADECO avers that the Commission has held that in an incumbent/challenger context, it is not unreasonable to assume that the incumbent would be receptive to an offer to lease or purchase the station's facilities if its renewal was denied, citing *United Television Co., Inc.*, 18 FCC 2d 363, 16 RR 2d 621 (1969); and *Central Florida Enterprises, Inc.*, 22 FCC 2d 260, 18 RR 2d 883 (1970). Further, although the above-cited cases primarily concern antenna site availability, the applicant submits that the reasoning is equally applicable to studio site availability. Thus, WADECO explains, it has reasonably assumed that WFAA's facilities would be available if the mutually-exclusive application were to be denied. In reply, Belo argues that the cases relied upon by WADECO are inapposite; in both *United* and *Central Florida Enterprises* the Commission merely held that during the pre-designation period, reliance on availability of an existing station's facilities does not render an application fatally defective or substantially incomplete.

4. In proceedings involving new applicants, a properly substantiated allegation that an applicant has not approached the owner of property specified as a prospective site would ordinarily be adequate, standing alone, to warrant the addition of a site availability issue. See *Lake Erie Broadcasting Company*, 31 FCC 2d 45, 22 RR 2d 647 (1971). However, we believe that in cases involving an incumbent/challenger, a somewhat different standard is appropriate. As the Commission has held, absent some contrary indication or unusual circumstances, it is reasonable for an applicant to assume that a renewal applicant whose application has been denied would be amenable to future negotiations

for transfer of its facilities.[2] Although Belo argues that WADECO has not approached it as the owner of the proposed antenna and studio facilities, Belo has, nevertheless, not alleged that it would not enter into negotiations looking toward use of those facilities should its application be denied. Accordingly, the availability issue will not be added. Finally, since the requested issues inquiring into costs for studio and transmitter are predicated on the challenge to the availability of the sites, and since petitioner has not specifically disputed the reasonableness of the estimates, issues inquiring into costs for studio and transmitter will not be added.

NETWORK AFFILIATION ISSUE

5. Belo alleges that, although WADECO proposes an ABC television network affiliation, it does not have reasonable assurance of securing such an affiliation. In support of this contention, the petitioner submits an affidavit of Richard L. Beesmyer, vice president in charge of affiliate relations for ABC, in which the affiant states that ABC has not had any discussions with WADECO regarding affiliation, and that it is ABC's policy to commence such negotiations only after a construction permit has been granted to an applicant. With respect to WADECO's prospects of obtaining an ABC affiliation if its application were to be granted, Beesmyer explains that since there are four VHF stations in the Dallas-Fort Worth area, it is possible that at least two, if not more, VHF stations would be candidates for an available ABC affiliation in the market. Belo further alleges that, if WADECO were to operate as an independent station, rather than as an ABC affiliate as proposed, this change in circumstances could well have a substantial effect on WADECO's ability to meet its financial obligations and to effect its proposed programming, citing *Western Communications, Inc.* (*KORK*), 39 FCC 2d 1077, 26 RR 2d 1456 (1973). Thus, petitioner argues that the standards set forth in *Ultravision Broadcasting Co.*, 1 FCC 2d 544, 5 RR 2d 343 (1965), should properly be applied to WADECO, rather than the requirement that it demonstrate only that it has sufficient funds to construct and to operate a proposed station for three months without revenues.[3]

6. In opposition, WADECO argues that the Review Board's addition of a network availability issue in *Western* runs contrary to prior Commission precedent; the appropriate standard was enunciated in *Springfield Telecasting Co.*, FCC 64R-471, 3 RR 2d 727 (1964), in which the Board held that the proponent of the issue is required to present allegations which support the conclusion that *no* network affiliation is possible. This, WADECO asserts, Belo has failed to do. The Broadcast Bureau also opposes the addition of the issue.

---

[2] Compare *WHDH, Inc.*, 16 FCC 2d 1, 15 RR 2d 411 (1966), in which the Commission held that since a showing had been made that there were other uses to which the existing licensee's site could be put and that there were alternatives to the sale or lease of the property to a successful challenger, that the site availability issue had not been met.

[3] Inasmuch as the Commission did not discuss the network situation in the Dallas-Fort Worth market, there is no impediment to the Review Board's modification of the applicable financial qualifications standard, Belo contends, citing *Atlantic Broadcasting Company (WUST)*, 5 FCC 2d 717, 8 RR 2d 991 (1961).

The Bureau argues that Belo's request is premised upon the "erroneous assumption" that the Commission's decision not to apply the *Ultravision* standards was in some way based on the assumption that WADECO would obtain an ABC affiliation; rather, as indicated in a footnote in the designation Order, FCC 73-542, released May 24, 1973, the Commission predicated the three-month test on its TV Broadcast Financial Data Report for 1972, which reveals that the Dallas-Fort Worth television broadcast stations generated revenues on an average in excess of the applicant's anticipated first-year operating costs. Thus, the Bureau concludes, the test was not the revenues of the existing ABC affiliate, but average revenues in the market. Given this, the Bureau notes that, although Belo has adequately demonstrated that WADECO is not assured of an ABC affiliation, it has not demonstrated that, absent such affiliation, WADECO would not generate revenues in excess of anticipated first-year operating costs. In reply, Belo asserts that the Commission did not find that WADECO would generate revenues equal to the average of other stations in the market if its first year of operation were as an independent nonnetwork station. In any event, Belo now questions whether WADECO's cost estimates, which were based upon a proposed network affiliation, can be regarded as acceptable cost estimates for an independent station operation.

7. The Review Board is of the view that a substantial question has been raised as to whether WADECO has reasonable assurance of obtaining an ABC affiliation. See *Western Communications, Inc., supra.* Moreover, in light of the network affiliation question, additional questions are raised as to the effect this would have on the applicant's financial qualifications and ability to effectuate its programming proposal. The specification of a network affiliation issue does alter the evaluation of WADECO's financial qualifications. Thus, to the extent that its financial proposal is dependent upon network programming and rates, it may not be accurate and complete in all significant respects in the event the applicant fails to secure an affiliation. Accordingly, an issue will be specified to inquire into the applicant's cost estimates which are contingent upon the ABC affiliation.[4] We, however, do not agree with Belo that the necessary correlate of a network affiliation issue in a proceeding where the applicant in question is seeking to supplant an existing licensee is the imposition of the *Ultravision* standard, which requires an applicant to demonstrate the availability of funds for construction and first-year operating expenses. Ordinarily, where an applicant seeks to replace a station which has an established record of advertising revenues, extending over a prolonged period of time, the availability of revenues is beyond dispute and the imposition of a three-month standard is appropriate. See *Orange Nine, Inc.*, 7 FCC 2d 788, 9 RR 2d 1157 (1967). While it is true that the lack of a network affiliation could affect estimated revenues, the Commission, in part, in the designation Order in this case predicated its use of the three-month test on the average revenues of all the stations

---

[4] Similarly, in the absence of an alternate programming proposal, which is not dependent upon a network affiliation, the issues will also inquire into WADECO's ability to effectuate its programming proposal.

in the market, not just affiliated licensees. As a result, in the absence of a showing that drastic change in revenues could reasonably be anticipated if WADECO commenced operation in the market without a network affiliation, there is no basis for applying a different financial qualifications test.[5]

SUBURBAN ISSUE

8. In support of its request for a *Suburban* issue, Belo alleges that WADECO's application fails to show compliance with several of the requirements of the Commission's *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971). Initially, petitioner alleges that WADECO's demographic survey is deficient, inasmuch as it represents nothing more than extracts from certain Chamber of Commerce publications, which collectively fall short of informing the Commission and the applicant of precisely what significant groups comprise the community and which serve to make Dallas a distinctive community.[6] As a result, petitioner contends, there is no means of telling whether WADECO has in fact consulted with leaders of all significant groups in the community. The showing is further deficient in this regard, Belo continues, because WADECO has failed to disclose the basis upon which it chose the individuals whom it interviewed, citing *St. Cross Broadcasting, Inc.*, 39 FCC 2d 1067, 26 RR 2d 1311 (1973). Belo also contends that WADECO's survey of the general public is deficient because the method of selecting interviewees was not designed to produce a cross-section of the general public.[7] Moreover, Belo asserts that it is impossible to determine from the WADECO showing what community problems were identified by members of the general public, as distinguished from problems identified by community leaders. Petitioner argues that, although an applicant is not required to include an evaluation of community problems in its application, the form in which WADECO presented its ascertainment efforts raises a serious question as to whether the applicant actually evaluated the results of its survey efforts. Finally, with respect to the applicant's proposed programming, Belo claims that WADECO failed to show both in its original application and subsequent amendments thereto precisely what program matter it proposes to carry to meet the major problems listed in its application.[8]

---

[5] In this regard, it should be noted that the Dallas-Fort Worth market has three affiliates and one independent VHF operation; accordingly, the average station revenues include the revenues attributable to the independent operation with which WADECO conceivably might be in competition for the available ABC affiliation if WFAA's application were to be denied.

[6] In support of this allegation, petitioner submits four exhibits listing the names of public service agencies and civic, youth, cultural and professional organizations allegedly omitted from WADECO's compositional study.

[7] The method used by WADECO was to telephone one person from the listings on every third page of the telephone books of Dallas and Fort Worth; Belo asserts that this method did not produce a representative sample of the general public.

[8] In support of this contention, petitioner relies on the following statement in WADECO's original application: "The applicant expects to treat all of the above problems on one or more of its proposed programs listed in Exhibit No. 7." According to Belo, such a vague and general statement is clearly insufficient to comply with the *Primer* and raises a serious question regarding the responsiveness of WADECO's proposed programming to the community's ascertained needs, citing *Middle Georgia Broadcasting Co.*, 30 FCC 2d 796, 22 RR 2d 524 (1971); *Salem Broadcasting Co., Inc.*, 33 FCC 2d 672, —— RR 2d —— (1972); and *William A. Gaston*, 35 FCC 2d 624, 24 RR 2d 779 (1972).

9. In opposition, WADECO urges that, taken as a whole, its ascertainment efforts and proposed programming show that it has made the required good faith effort to inform itself of area problems and demonstrated its intention to respond to community needs, citing *Colorado West Broadcasting, Inc.*, 39 FCC 2d 691, 26 RR 2d 1083, 1087 (1973); and *Greenfield Broadcasting Corporation*, 30 FCC 2d 774, 22 RR 2d 497, vacated on other grounds, 32 FCC 2d 135 (1971). As for the challenge to its demographic survey, WADECO asserts that the Chamber of Commerce material, as well as the other "reliable studies and reports" which it used in designing its compositional study, satisfy the requirements of the *Primer* (Q. & A. 9). Accordingly, with respect to the sufficiency of its community leader survey, WADECO argues that petitioner's claim must be rejected because, as previously shown, WADECO's determination of the composition of the community fully complies with the *Primer*.[9] WADECO also asserts that its survey of the general public was conducted in strict accordance with the *Primer*, which specifically provides that a random selection of names from a telephone directory is sufficient. Additionally, WADECO claims that there is no requirement that the applicant list separately the needs ascertained from the general public from those identified by community leaders where, as here, the results of the two surveys were virtually identical, citing *Lexington County Broadcasters, Inc.*, 40 FCC 2d 694, 27 RR 2d 416 (1973). Finally, WADECO claims that the best evidence of its evaluation process is its showing of typical and illustrative programs to be broadcast to meet community problems, which has not been and is not susceptible to an attack by petitioner.

10. The Broadcast Bureau supports addition of the requested issue on several of the grounds advanced by Belo. The Bureau agrees that WADECO's compositional study is deficient in significant areas, that the applicant's showing that the persons interviewed in the community leader survey are in fact leaders is inadequate, and that WADECO should be required to demonstrate that its programming is the result of evaluation of survey results, particularly those obtained since the last programming proposal amendment. However, the Bureau asserts that the random sample method employed by WADECO in its general public survey has been expressly approved by the Commission.

11. In reply, petitioner contends that WADECO's reliance upon *Colorado West Broadcasting, Inc., supra;* and *Greenfield Broadcasting Corp., supra*, is misplaced in that those two cases involved communities with homogeneous populations where the need to prepare a complete community profile is not as important as in the case of a large cosmopolitan city like Dallas, Texas. There is no escaping the fact, Belo contends, that WADECO's showing substantially ignores significant groups and activities which make Dallas distinctive. With respect to

---

[9] In any event, WADECO contends that the holding in *Voice of Dixie, Inc.*, 41 FCC 2d 550, 27 RR 2d 980 (1973), pet. for rev. granted, FCC 73-967, released September 24, 1973, in which the Review Board held that a preliminary community analysis is not strictly required, if the totality of the evidence establishes an applicant's reasonable awareness of significant population groups, their respective community leaders and community problems, would be applicable to its showing.

WADECO's general public survey, Belo contends that since the applicant's random sample on its face does not appear to have produced a true cross-section of the community (allegedly the case here where 78% of the sample turned out to be females), the *Primer* suggest that the applicant should consult with additional members of other groups to obtain better insights into their particular problems. (See Q. & A. 13(b).) Finally, Belo argues that WADECO's reliance upon *Voice of Dixie, Inc., supra,* is misplaced; on the contrary, petitioner contends that it may not be assumed that because the applicant in that proceeding met its burden during an evidentiary hearing, that WADECO has similarly met its burden in its application showing.

12. In the Board's judgment, a *Suburban* issue is not warranted. An examination of WADECO's demographic showing in conjunction with its community leader survey indicates that WADECO is reasonably apprised of the minority, racial, or ethnic breakdown of the community, its economic activities, governmental activities, public service organizations, and any other factors or activities that make the particular community distinctive. (See Q. & A. 9 of the *Primer.*) WADECO has consulted with appropriately identified community leaders who are substantially representative of the groups that petitioner alleges WADECO omitted. In our view, the applicant has made a thorough and comprehensive showing in this regard. As noted by the Bureau and WADECO, the method employed by WADECO in selecting its general public interviewees has been expressly approved by the Commission.[10] Moreover, Belo has advanced no basis for concluding that further general public consultations would elicit further problems or viewpoints which would enhance WADECO's insight into the community.[11] Further, there is no requirement that an applicant list separately the needs ascertained from the general public, particularly when they are substantially identical to those obtained in the community leader survey. *Lexington County Broadcasters, Inc., supra.* Furthermore, there is no requirement that an applicant include an evaluation with his application (*Primer*, Q. & A. 24); rather, an applicant's evaluation can be determined by reviewing the broadcast matter which he proposes to meet the ascertained needs. In this connection, the Board is of the view that WADECO's programming proposals are sufficiently detailed to comply with the *Primer* (Q. & A. 29), which seeks "the description, and anticipated time segment, duration and frequency of broadcast of the program or program series, and the community problem or problems which are to be treated by it." Also, WADECO filed an amendment on December 20, 1971, which contained

---

[10] See paragraph 40 of the *Primer,* wherein it states, "a random selection of names from a telephone directory is sufficient for our purposes."

[11] In this connection, we note that the fact that a higher percentage of those members of the general public who were consulted were female has no relevance to the validity of the survey absent some demonstration by Belo that the number of males contacted was insufficient to adequately obtain a representative sampling of opinions.

a list and description of four new programs designed to meet the community problems listed in amendments to its ascertainment showing.[12] In view of the foregoing, the Board finds that the applicant has made a reasonable and good faith effort to ascertain the needs and interests of the community and therefore a *Suburban* issue will not be specified by the Board.

MISREPRESENTATION ISSUE

13. Belo contends that eight of the persons named by WADECO as having been interviewed in its community leader survey were not, in fact, interviewed by any stockholder or other person purporting to act on behalf of the applicant.[13] Therefore, petitioner claims, a misrepresentation issue is warranted, citing *California Stereo, Inc.*, 39 FCC 2d 401, 26 RR 2d 887 (1973). In opposition, WADECO submits an affidavit of James K. Wade, president of WADECO, Inc., in which he states that he interviewed seven of the community leaders Belo alleges were not contacted. In addition, WADECO submits the affidavit of Mr. Eubanks, secretary-treasurer of WADECO, who avers that he contacted one of the community leaders in question and the affidavit of Mrs. Baird, secretary to Mr. Wade, attesting to the fact that she listened in on the conversations of six of the leaders and took notes of the answers given.[14] The Broadcast Bureau states that, absent a satisfactory explanation by WADECO as to why the community leaders it interviewed should now deny having been interviewed, the requested misrepresentation issue should be added.

14. In the Board's opinion, Belo has raised serious questions concerning the truthfulness of WADECO's representations concerning its community leader survey. According to the affidavits submitted by the petitioner, eight community leaders allegedly surveyed by WADECO either claim never to have been interviewed by anyone purporting to represent WADECO, or repudiate the answers attributed to them. WADECO's submission of the affidavits of Mr. Wade and Mr. Eubanks claiming that they interviewed these eight persons is not adequate to answer their assertions of never having been interviewed.[15] In these circumstances, the addition of a misrepresentation issue is warranted. See *California Stereo, Inc., supra.*

---

[12] Although WADECO did not specifically indicate what program matter it would carry to deal with the problems listed in the last three amendments to its ascertainment showing, we find that applicant's programming proposals taken as a whole are sufficient to meet the ascertained needs of the community.

[13] In support, Belo submits affidavits from each of the eight persons stating that they were never contacted by any person purporting to represent WADECO, Inc. to ascertain his views as to the needs, interests and problems of the area.

[14] In its reply, Belo submits the affidavits of six of the community leaders allegedly contacted by the applicant. One community leader recalls a conversation with Wade but claims Wade did not mention the fact that he was representing WADECO, Inc.; four community leaders aver they have no recollection of being contacted by anyone on behalf of WADECO; and one admits to the possibility of having had such a conversation but asserts his response to the specific questions would not have been as indicated.

[15] See *Christian Voice of Central Ohio* 26 FCC 2d 76, 20 RR 2d 389 (1970); and *WIOO, Inc.*, 40 FCC 2d 643, 27 RR 2d 204 (1973), where the Board added appropriate issues where conflicting affidavits were involved.

15. Accordingly, IT IS ORDERED, That the motion to enlarge issues, filed June 14, 1973, by Belo Broadcasting Corporation, IS GRANTED to the extent indicated herein, and IS DENIED in all other respects; and

16. IT IS FURTHER ORDERED, That the issues in this proceeding ARE ENLARGED by the addition of the following issues:

(a) To determine whether WADECO, Inc. can reasonably expect to secure a network affiliation, and, if not, the effect on WADECO, Inc.'s financial qualifications and its ability to effectuate its program proposals.

(b) To determine whether WADECO, Inc. misrepresented facts to the Commission in connection with its survey of community leaders.

(c) To determine whether, in light of the evidence adduced under the preceding issues, WADECO, Inc., is qualified to be a licensee of the Commission.

17. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of the evidence and the burden of proof under issue (a) added herein SHALL BE on WADECO, Inc.; and that the burden of proceeding with the introduction of evidence under issues (b) and (c) added herein SHALL BE on Belo Broadcasting Corporation, and the burden of proof thereunder SHALL BE on WADECO, Inc.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73-1006

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of DENVER T. BRANNEN, JOEL T. BRANNEN AND EUGENIA S. BRANNEN, D.B.A. BRANNEN AND BRANNEN, KEY WEST, FLA. Requests: 95.5 MHz, No. 238; 100 kW (H & V); 257 feet For a Construction Permit	File No. BPH-8078

MEMORANDUM OPINION AND ORDER

(Adopted September 26, 1973; Released October 3, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. The Commission has before it (a) a petition for reconsideration and a petition for stay of our grant of the above application filed by Florida Keys Broadcasting Corporation (Florida Keys), licensee of stations WKIZ(AM) and WFYN(FM), Key West, Florida; (b) an opposition to the petitions for reconsideration and stay of the Commission's grant of Brannen and Brannen's application; and (c) a "Supplement to Petition for Reconsideration."

2. Since Florida Keys' stations WKIZ(AM) and WFYN(FM) are licensed to serve Key West, Florida, they will compete for listeners and advertising revenues with any other FM broadcast station serving the community. Therefore, we find that Florida Keys has standing as a party in interest within the meaning of section 309(d) of the Communications Act of 1934, as amended, and section 1.580(i) of the Commission's rules. *F.C.C.* v. *Sanders Bros. Radio Station*, 309 U.S. 470, 9 RR 2008 (1940). On June 13, 1973, Florida Keys filed informal objections to Brannen and Brannen's application in a pleading entitled "Objection of Florida Keys Broadcasting Corporation to Grant of Application Prior to Resolution of Rule Making Proceeding" (Objection). The Objection was captioned as having relevance not only to Brannen and Brannen's application, but also to a rule-making proceeding, RM-1963, Docket No. 19736, which concerns the possible amendment of the FM broadcast Table of Assignments to add a class A channel to Key West, Florida. The Objection was not associated with Brannen and Brannen's application, but was placed in the rule-making file, and consequently was not considered prior to our grant of the application. In that Objection, Florida Keys requested that we defer action on Brannen and Brannen's application pending the resolution of the above-referenced rule-making proceeding to allocate a class A FM broadcast channel to Key West, and also attempted to raise certain issues concerning Brannen and Brannen's ascertainment of commu-

nity problems and its programming proposal. Florida Keys' petition for reconsideration, filed on July 6, 1973, in essence, requested that we consider the matters mentioned in the objection. In its "Supplement to Petition for Reconsideration," filed on July 19, 1973, Florida Keys raised new objections to the grant of Brannen and Brannen's application based on certain aspects of an application for a television construction permit in Panama City, Florida, filed by Panhandle Broadcasting Co., Inc. (Panhandle), in which Denver T. Brannen, who owns 60 percent of Brannen and Brannen, has a 40 percent ownership interest. Accordingly, we shall treat all of these matters at this time.

3. Florida Keys' Objection of June 13, 1973, requested the Commission to consider Brannen and Brannen's application for a construction permit for a new class C FM station in Key West together with the proposed rule making in Docket No. 19736 (RM-1963), since the Commission was contemplating adding a class A channel to Key West in the rule-making proceeding and Florida Keys contended that Key West lacked the financial base to support both an additional class C FM station and a class A FM station. Florida Keys stated that it did not object "to *both* a grant of the subject application *and* allocation of the proposed class A FM channel", but merely wished the Commission to consider Brannen and Brannen's application together with the proposed rule making, "with due examination of the aggregate, deleterious effects a grant of both may have on broadcast service in Key West." Florida Keys also stated that the petitioner in the rule-making proceeding would have the opportunity to apply for the remaining class C channel if the Commission determines that allocation of the class A channel is not in the public interest. We do not believe that these contentions of Florida Keys should have warranted the withholding of action on Brannen and Brannen's application. The rule-making proceeding does not contemplate the deletion of the existing class C assignment in Key West for which Brannen and Brannen has applied, and Florida Keys has not requested such action. Furthermore, the petitioner for the class A assignment has not requested that we withhold action on Brannen and Brannen's application pending completion of the rule-making proceeding and has not filed any objections to the grant thereof. In fact, the petitioner in RM-1963 contends that a class A facility would adequately serve Key West and would be considerably more economical than a class C facility, and also asserts a strong interest in providing a strictly local service to the community. Thus, it would appear that the petitioner in RM-1963 contemplates a relatively small, community-based FM station and would not be interested in a class C channel. In addition, any applicant which desired to utilize the class C channel for which Brannen and Brannen applied had adequate opportunity to apply for the same channel during the nine months that Brannen and Brannen's application was on file. Thus, in light of the foregoing, and in light of our general policy of not withholding action on applications for FM channels which have been allocated to particular communities in the absence of compelling public interest considerations, we find that there was no such public interest reason for withholding action in this case, and we will not reconsider our action on this ground.

4. The petitioner also attempted to raise several issues regarding Brannen and Brannen's response to certain portions of section IV–A of its application. Specifically, Florida Keys alleges that Brannen and Brannen did not comply with paragraph 9 of our Primer on the ascertainment of community problems, 27 F.C.C. 2d 650 (1971), in that it did not list the public service and civic organizations within its proposed community of license and that it did not list all the community problems revealed by its consultations with community leaders, as required by paragraph 22 of the Primer. In this regard, we observe that Brannen and Brannen's application mentions that Key West has 13 civic and social organizations and that nine of the community leaders interviewed represented nine of these organizations. Brannen and Brannen has clearly indicated which leaders represent these organizations and has clearly complied with our Primer requirement that a broadcast applicant must provide a description of its community of license and consult with leaders of significant groups within that community. As to the listing of community problems, Brannen and Brannen's application listed the six problems which it considered to be the most important. Subsequently, in its opposition pleading to Florida Keys' petition for reconsideration, Brannen and Brannen supplemented its original list with several problems which received some mention during the interviews conducted to ascertain Key West's problems but which were apparently not referred to by most of the interviewees. Although its original list of problems was somewhat incomplete, Brannen and Brannen asserts that all of the problems discovered were considered in formulating responsive programming. Moreover, we find that Brannen and Brannen has satisfied the policy behind our Primer requirement that all discovered problems should be listed, namely, to encourage broadcast applicants to propose programming which is responsive to the problems ascertained. A review of Brannen and Brannen's ascertainment of community problems discloses that it has complied in all significant respects with the standards of our Primer on that subject, and has proposed to broadcast programs which are responsive to the problems ascertained.

5. Paragraph 18, section IV–A, of our application form for authority to construct a new AM or FM broadcast station makes the following request:

> State how and to what extent (if any) applicant proposes to contribute to the over-all diversity of program services available in the area or communities to be served.

This request literally seeks only information and does not require an affirmative showing that an applicant will, in fact, provide unique entertainment and/or non-entertainment programming. Brannen and Brannen stated that it anticipated that both its entertainment and non-entertainment programming would meet listener needs which were currently inadequately served in Key West. In its Objection of June 13, 1973, Florida Keys questions whether Brannen and Brannen will, in fact, contribute to the over-all diversity of program services available to the area through its programming. Specifically, Florida Keys asserts that Brannen and Brannen plans to have a "Top 40" music format during 70 percent of its broadcast week, while station WKIZ, licensed to Florida Keys, already devotes 82 percent of its broadcast week to such "modern contemporary music," and that three of Brannen and Brannen's five proposed public affairs programs are already carried by Florida Keys' Key West stations, WKIZ(AM) and WFYN (FM).

6. In general, the choice of entertainment formats lies primarily within the discretion of the licensee, and the judgment exercised by a broadcast applicant or licensee regarding these matters will not be questioned unless it appears that the choice is not reasonably attuned to the tastes of the residents of the proposed community of license, or that an existing licensee proposes a change in format which would deprive the community of programming for which there is no comparable listening alternative. [See, e.g., *Citizens Committee* v. *FCC*, 436 F.2d 263, 20 RR 2d 2026 (D.C. Cir., 1970), and *Citizens Committee To Keep Progressive Rock* v. *FCC*, 27 RR 2d 463 (D.C. Cir., 1973)]. The Supreme Court has stated the following:

> Congress intended . . . to permit a licensee who was not interfering electrically with other broadcasters to survive or succumb according to his ability to make his programs attractive to the public. *FCC* v. *Sanders Brothers Radio Station*, 309 U.S. 470, 475 (1940).

No information has been submitted which indicates that Brannen and Brannen has proposed an entertainment format which is not reasonably attuned to the tastes of the residents of Key West. In the absence of such an assertion, a broadcast applicant is permitted to choose an entertainment format which it believes will succeed, as Brannen and Brannen has done.

7. As to Florida Keys' objections to Brannen and Brannen's nonentertainment programming, we observe once again that Brannen and Brannen has proposed sufficient programming which appears responsive to community problems to meet the requirements of our Primer on the ascertainment of community problems by broadcast applicants, 27 F.C.C. 2d 650 (1971). Further, we find that Brannen and Brannen has proposed at least seven programs which are responsive to community problems and needs, not five as alleged by Florida Keys. The three public affairs programs which are already being broadcast by Florida Keys' Key West stations and which Brannen and Brannen also proposes to broadcast are tapes produced by the University of Florida and would appear to have general relevance to radio audiences throughout the United States. Furthermore, Brannen and Brannen proposes to present a weekly thirty-minute public affairs program which will be locally produced and will feature interviews with local government and civil leaders concerning a wide range of topics. Thus, Brannen and Brannen's public affairs programming appears adequate.

8. Denver T. Brannen, who owns 60 percent of the applicant, is also a 40 percent stockholder in Panhandle Broadcasting Co., Inc. (Panhandle), which is the permittee of television station WDTB, Panama City, Florida. Florida Keys alleges in its "Supplement to Petition for Reconsideration" that a question exists regarding a $400,000 loan commitment made to Panhandle by the Small Business Assistance Corporation of Panama City, Florida, Inc. (SBAC) while a 25 percent stockholder and director (L. Charles Hilton, Jr.) in Panhandle was SBAC's

president, since the Small Business Administration prohibits its licensee companies, such as SBAC, from providing financing to its officers, stockholders, or other associates unless a specific exception has been granted. Florida Keys notes that the Small Business Administration is investigating this matter and requests the Commission to reconsider its grant of Brannen and Brannen's application in light of this situation and the effect it may have on the qualifications of Panhandle and its principals to be licensees of the Commission.

9. In its application for license to cover its construction permit for television station WDTB, filed on July 30, 1973, Panhandle submitted an affidavit from Denver T. Brannen in which he states that information submitted with Panhandle's application for a construction permit concerning certain stock ownership interests was in error. The Commission has also very recently received the results of the Small Business Administration's investigation into the interests of the SBAC and Mr. Hilton in Panhandle. The Commission has not as yet made a determination with respect to this entire matter. However, since the aforementioned affidavit concerning information erroneously filed with Panhandle's original application and the circumstances surrounding this matter raise possible questions concerning the basic qualifications of Panhandle and its principals to be licensees of the Commission, we believe the grant of Brannen and Brannen's application for a construction permit for a new FM broadcast station in Key West should be set aside and the application returned to pending status until the Commission determines the course to be taken in this matter. If construction has already begun, it must cease as of the date this Order is adopted.

10. In view of the foregoing, the July 3, 1973, grant of Brannen and Brannen's application for an FM broadcast construction permit (File No. BPH-8078) IS HEREBY SET ASIDE and the application is returned to pending status.

11. IT IS FURTHER ORDERED, That the petition for stay, the petition for reconsideration and supplement thereto, concerning our July 3, 1973, grant of Brannen and Brannen's application, ARE GRANTED to the extent indicated above, and ARE DENIED in all other respects.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73-1004

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re
BUFFALO TELEVENTS INC., BUFFALO, WYO.
Request for Order To Show Cause
} File No. CSC-20, WY 008

MEMORANDUM OPINION AND ORDER

(Adopted September 26, 1973; Released October 4, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONER REID CONCURRING IN THE RESULT

1. On July 28, 1972, Harriscope Broadcasting Corporation, licensee of Station KTWO-TV, Casper, Wyoming, filed a "Request for Cease and Desist Order and Petition to Deny Application for Certificate of Compliance" directed against Buffalo Televents, Inc., operator of a cable television system at Buffalo, Wyoming, alleging that Buffalo Televents had violated Section 76.11 of the Commission's Rules[1] by unauthorized carriage of Station KHSD-TV, Lead, South Dakota. On August 29, 1972, Buffalo Televents filed an "Opposition to 'Request for Cease and Desist Order and Petition to Deny Application for Certificate of Compliance.'"[2] On August 31, 1972, Harriscope Broadcasting filed its "Reply to Opposition."

2. Buffalo Televents operates a twelve-channel cable television system and provides the following television signals:

KUTV (NBC), Salt Lake City, Utah
KSL-TV (CBS), Salt Lake City, Utah
KCPX-TV (ABC), Salt Lake City, Utah
KUED (Educ.), Salt Lake City, Utah
KTWO-TV (NBC, ABC, CBS), Casper, Wyoming
KHSD-TV (ABC, NBC), Lead, South Dakota

3. We find that carriage of KHSD-TV is lawful. Six months before commencing carriage of KHSD-TV, Buffalo Televents requested service from a microwave carrier to receive the signal. Buffalo Televents then obtained equipment to receive the microwave signal and to amplify it for subscriber reception. On March 15, 1972, sixteen days before the effective date of the Rules, Buffalo Televents commenced carriage of the signal. The following evening, an unstable condition developed in the microwave receiver and required the signal's removal. On April 6, 1972, the receiver was reinstalled and reactivated.

---

[1] Section 76.11 provides in pertinent part that,
"(a) No cable television system shall commence operations or add a television broadcast signal to existing operations unless it receives a certificate of compliance from the Commission."

[2] This decision is limited to consideration of the requested Order to Show Cause and does not pass upon Buffalo Televents' pending application (CAC-359) for a Certificate of Compliance.

4. In *Metro Cable Co.*, FCC 73–89, 39 FCC 2d 169, we held that a system was grandfathered under Section 76.11 where prior to March 31, 1972, it had been in operation briefly even though a short circuit at the moment of energizing prevented commencement of service. Similarly, carriage of KHSD–TV commenced here within the meaning of Section 76.65 of the Rules when the microwave facility was energized. Because Buffalo Televents is located beyond the predicted Grade B contour of any television broadcast station and is not in a community with a 100 watts or higher power translator, it was not obligated to provide any prior notification pursuant to former Section 74.1105 of the Rules.[3] Thus, Buffalo Televents was authorized to carry KHSD–TV.

In view of the foregoing, the Commission finds that the issuance of the requested Order to Show Cause would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Request for Cease and Desist Order and Petition to Deny Application for Certificate of Compliance" filed July 28, 1972, by Harriscope Broadcasting Corporation IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

---

[3] Section 74.1105 provides in pertinent part that,

"(a) No CATV system shall commence operations in a community or commence supplying to its subscribers the signal of any television broadcast station carried beyond the Grade B contour of the station, unless the system has given prior notice of the proposed new service to the licensee or permittee of any television broadcast station within whose predicted Grade B contour the system operates or will operate, and to the licensee or permittee of any 100 watts or higher power translator station operating in the community of the system, and has furnished a copy of each such notification to the Federal Communications Commission, within sixty (60) days after obtaining a franchise or entering into a lease or other arrangement to use facilities; in any event, no CATV system shall commence such operations until thirty (30) days after notice has been given."

F.C.C. 73-989

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of CAROLINAS ADVERTISING, INC. For Renewal of License of Station WADE, Wadesboro, N.C.	BR-1595

SEPTEMBER 19, 1973.

Certified Mail—Return Receipt Requested

RISDEN A. LYON,
President, Carolinas Advertising, Inc., Radio Station WADE, Post Office Box 214, Wadesboro, N.C. 28170

DEAR MR. LYON: The Commission has under consideration your application for renewal of the licensee of Radio Station WADE (File No. BR-1595), filed August 28, 1972, and information obtained during a recent field inquiry into the operation of Station WADE.

The Commission field investigation revealed that for about 25 years, a drug store, Fox and Lyon Drug Company wholly owned by the 100 percent stockholder in the licensee corporation, has been receiving a high volume of commercial announcements at a comparatively low rate. In 1972 you broadcast an average of nine 60-second commercial announcements per day for the commonly owned, non-broadcast enterprise. This amounted to between 4.6 percent and 10.1 percent of the total daily commercial advertising time sold by the station. For this advertising, Fox and Lyon Drug Company paid a flat rate of $180.00 per month; considerably less than the rates shown on your published rate card and, for the most part, considerably less than the rates charged other drug stores in the applicable market area. The Commission considers the fact that Fox and Lyon paid WADE for the advertising immaterial, since the practical effect was to take money out of one pocket and put it in another. Moreover, it appears from the investigation that this extremely favorable rate was granted to a competing drug store only when the competitor demanded a similar rate. Further, it appears that this rate was withdrawn from the competitor at a later date while it was continued for the commonly-owned business.

It is well settled that broadcast stations are licensed to serve the public interest, rather than the private interest of the licensee. *KFKB Broadcasting Association* v *Federal Radio Commission*, 47 F. 2d 670 (1931); *Young People's Association for the Propagation of the Gospel*, 6 F.C.C. 178 (1938); *Gross Telecasting, Inc.*, 14 F.C.C. 2d 239 (1968). Licensees must refrain from using the exclusive broadcasting franchise as a trade weapon to gain a competitive advantage in other business activities. *Sarkes Tarzian, Inc.*, 23 F.C.C. 2d 221 (1970);

WFLI, Inc., 13 F.C.C. 2d 846 (1968). Thus, while a licensee is not prohibited from engaging in non-broadcast activities or advertising them over its facilities, it is clear that a licensee may not utilize its broadcast facilities in a manner that would be destructive of competition in the area of its non-broadcast business interests. A licensee's use of its broadcast facility to advertise its non-broadcast activities in a manner which forecloses competition or unfairly treats a competitor would clearly subvert the policy which underlies the grant of the broadcasting license in the first instance. *WFLI, Inc., supra;* see also *Aluminum Company of America* v *United States*, 148 F. 2d 416 (1945).

It appears that during the months of January through November 1972, you broadcast approximately 3,400 commercial announcements for the commonly owned, non-broadcast enterprise while competitors in the drug store business in and around Wadesboro, North Carolina, were charged considerably higher rates for lesser amounts of commercial time. In the past, we have considered similar commercial practices, where the licensee uses the leverage of its position as a broadcast licensee as a means of gaining a competitive advantage, to be inconsistent with the public interest and to constitute an unfair method of competition. See *Waterman Broadcasting Corporation of Texas (KTSA)*, 28 F.C.C. 2d 348 (1971) and *KISD, Inc.*, 22 F.C.C. 2d 833 (1970).

Once again we reach the same conclusion after considering the facts of this case. Moreover, it should be made clear, that where a licensee uses its broadcast facility to advertise non-broadcast activities in such a manner as to constitute an unfair method of competition, the lack of any intent or purpose to create the anti-competitive results will not exculpate the offending licensee. See *KISD, Inc., supra.*

Evidence obtained during the investigation also revealed that the licensee had issued monthly statements to the Pee Dee Bottling Company of Hamlet, North Carolina, for more advertising messages than actually were broadcast. Although the advertiser received no reimbursement from the manufacturer or distributor of the product advertised, the monthly statements it received from WADE misrepresented the number of announcements broadcast and thus were in violation of Section 73.1205 of the Commission's Rules. Although the advertiser was apparently satisfied with the licensee's actions because the rate he was charged was extremely low compared to those offered by other stations, the absence of a complaint does not, of course, mitigate the fact that an apparent violation of our Rules took place. We also note that the issuance of the incorrect statements appears to have been due to negligence rather than an intent to defraud the advertiser. However, that fact does not excuse the violation, since the licensee is responsible for the exercise of reasonable diligence to see that its employees do not issue documents which would violate the Rule.

In view of the foregoing, the Commission has been unable to determine that the renewal of the licensee of Station WADE for a full three year term would serve the public interest, convenience and necessity.

In order to provide an earlier opportunity for review of the operation of WADE, it is, therefore, granting renewal of the licensee for WADE for a term ending October 1, 1974.

During that term, it should be emphasized that when WADE is used to advertise non-broadcast activities of its licensee, you will be expected to exercise extreme care and caution to prevent practices which tend to constitute unfair methods of competition and to exercise constant scrutiny and supervision over the station's commercial policies to insure that such policies will avoid anti-competitive results. You also will be expected to exercise diligence to see that your agents or employees take no actions in violation of Section 73.1205 of our Rules.

Commissioner Robert E. Lee absent; Commissioners H. Rex Lee and Hooks concurring in the result.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73R-342

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of CHESAPEAKE-PORTSMOUTH BROADCASTING CORP., PORTSMOUTH, VA. For Broadcast License for WPMH (AM)	Docket No. 19787 File No. BL-13,137

MEMORANDUM OPINION AND ORDER

(Adopted September 28, 1973; Released October 1, 1973)

BY THE REVIEW BOARD: BOARD MEMBER BERKEMEYER ABSENT.

1. The Commission designated the application of Chesapeake-Portsmouth Broadcasting Corporation (Chesapeake-Portsmouth) for a Broadcast license for Station WPMH (AM)[1] for hearing by Order and Notice of Apparent Liability, FCC 73-748, released July 25, 1973. The issues specified include: (a) an adequate supervision and control issue; (b) an equal employment opportunity issue; (c) a Section 73.932(a) rules violation issue; and (d) a failure-to-maintain a public file issue. Now before the Review Board is a petition for enlargement of issues, filed August 15, 1973, by Chesapeake-Portsmouth, requesting the addition of an issue "to determine if the programming of Station WPMH has been meritorious."[2]

2. Chesapeake-Portsmouth contends that since the issues designated by the Commission relate to the operation of the station, the applicant's programming is relevant to the determination to be made herein. Therefore, petitioner argues that a meritorious programming issue is warranted. The Broadcast Bureau in its comments does not oppose petitioner's request; however, the Bureau asserts that the petitioner should be limited to showing programming broadcast before the Commission's field investigation was initiated on August 14, 1972, when, according to the Bureau, petitioner first learned that the Commission contemplated action against it. In reply, Chesapeake-Portsmouth asserts that it first "received notice" that the Commission was contemplating taking action against it when the Commission's "Order and Notice of Apparent Liability" was released on July 25, 1973.

---

[1] The construction permit under which Chesapeake-Portsmouth filed its present application for license was granted November 18, 1971. The application for license was filed on December 8, 1971. Station WPMH began operation in January, 1972 under program test authority.

[2] Also before the Review Board are the following related pleadings: (a) the Broadcast Bureau's comments, filed August 22, 1973; and (b) a reply, filed August 28, 1973, by Chesapeake-Portsmouth.

3. The Review Board will add an issue allowing Chesapeake-Portsmouth to submit evidence of its station's meritorious programming. The showing the applicant, permittee or licensee is allowed to make is generally limited to programming instituted before the licensee received notice that the Commission was contemplating action against it. See *Chronicle Broadcasting Co.*, 18 FCC 2d 120, 16 RR 2d 494 (1969); and *Midwest Radio-Television, Inc.*, 18 FCC 2d 1011, 16 RR 2d 987 (1969). However, a determination of when such notice was actually received should be made by the Administrative Law Judge in the first instance, and the Board will therefore not attempt to resolve this question. Finally, the Board notes that the issue will be added without prejudice to the rights of the parties to argue, subsequently, regarding the weight which should be accorded to the evidence adduced under the issue. See *Wagoner Radio Co.*, 12 FCC 2d 978, 13 RR 2d 114 (1968).

4. Accordingly, IT IS ORDERED, That the petition for enlargement of issues, filed August 15, 1973, by Chesapeake-Portsmouth Broadcasting Corporation, IS GRANTED to the extent indicated herein, and IS DENIED in all other respects; and

5. IT IS FURTHER ORDERED, That the issues in this proceeding ARE ENLARGED by the addition of the following issue:

> To determine whether the programming of Station WPMH (AM) has been meritorious, particularly with regard to public service programs;

6. IT IS FURTHER ORDERED, That the burdens of proceeding with the introduction of evidence and proof under the issue herein added SHALL BE on Chesapeake-Portsmouth Broadcasting Corporation.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73R-343

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of LOUIS C. STOCKARD, D.B.A. COASTAL ELECTRONICS CO., 3635 CALDER AVENUE, BEAUMONT, TEX. 77706 Order to Show Cause Why The License For Radio Station KLA-242 in the Business Radio Service Should Not Be Revoked	Docket No. 19384

APPEARANCES

Richard N. Evans, on behalf of Louis C. Stockard, d/b as Coastal Electronics Company; and *Virgil W. Tacy*, on behalf of the Chief, Safety and Special Radio Services Bureau, Federal Communications Commission.

DECISION

(Adopted October 1, 1973; Released October 5, 1973)

BY THE REVIEW BOARD: BERKEMEYER, NELSON AND PINCOCK.

1. This proceeding was initiated by an Order, released December 16, 1971, directing Louis C. Stockard (Stockard), d/b as Coastal Electronics Company, licensee of radio Station KLA-242 in the Business Radio Service, to show cause why his license should not be revoked. The Order to Show Cause was based on numerous alleged violations of the Commission's Rules which had been observed during five inspections of Stockard's station made between 1968 and 1971. The licensee received Official Notices of Violation after each inspection. The alleged violations include: (a) repeated failure to provide a proper Transmitter Identification Card at the transmitter location (Section 91.156(b) of the Commission's Rules); (b) improper posting of current station authorization at the principal control point (Rule 91.156(b)); (c) repeated failure to maintain accurate logs (Rule 91.160(c)); (d) repeated failure to make available the station maintenance records (Rule 91.160(a) and (b)); (e) failure to make timely transmitter measurements (Rule 91.108(a)(3), (b)(3), and (c)(3)); (f) repeated failure to make the base transmitter inaccessible (Rule 91.107(a)); (g) repeated failure to maintain tower paint in required condition (Rule 91.158(f)); (h) no entries in log indicating quarterly tower checks (Rules 91.158(c) and 91.160(e)(4)); (i) repeated failure to properly maintain beacon and side lights (Section 303(q) of the Communications Act of 1934, as amended; and Rules 91.158 and 16.56); (j) failure of logs to reflect the above-mentioned malfunctions and/or required notification of proper authorities (Rule 91.160(e)(2),

(3)(i)(iii)(iv)); and (k) failure of logs to reflect daily tower light checks (Rule 91.160(e)). The licensee was also charged with misrepresentation and lack of candor with respect to oral and written representations made to the Commission and with having made false entries in the station's logs.

2. A hearing was held in Beaumont, Texas, on February 10 and 11, 1972. In his Initial Decision (FCC 72D-38, released June 7, 1972), Administrative Law Judge Ernest Nash found that Stockard committed the acts which result in the rules violations listed in the Order to Show Cause, but concluded that Stockard's "failings" were the result of ineptness, rather than intentional violations, and that revocation would be "too extreme a result". Consequently, the Presiding Judge dismissed the Order to Show Cause.

3. The proceeding is now before the Review Board on exceptions filed by the Safety and Special Radio Services Bureau (Bureau). We have reviewed the Initial Decision in light of the Bureau's exceptions and accompanying brief, the respondent's arguments, and our examination of the record.[1] The Board is of the view that, while the Presiding Judge's findings of fact are accurate, they are incomplete in that they fail to contain other relevant and pertinent facts which are reflected in the record. The record establishes that Stockard committed numerous violations of Commission Rules over a four-year period. The Judge so concluded in his Initial Decision, but went on to state that Stockard's "failings . . . are more the result of ineptitude rather than a deliberate, conscious will to violate rules." The Judge therefore decided that Stockard's license should not be revoked. The record establishes further that, in addition to the numerous violations of the Commission's Rules, Stockard misrepresented material facts to the Commission and has been lacking in candor. In our opinion there are no mitigating circumstances whatsoever reflected in the record which would support the conclusion that revocation is "too extreme" a sanction. In light of Stockard's numerous rules violations *plus* his misrepresentations to the Commission and false log entries, many of which are described infra, revocation of his station license is the *only* appropriate sanction. Otherwise, the Commission's Rules would be rendered meaningless and the integrity of the Commission's processes would be undermined. In order to better understand our conclusions, we have decided to first restate the pertinent findings of fact, and then to discuss the matters in dispute.

FACTS

4. Stockard operates a retail store in Beaumont, Texas. His business consists mainly of the sale of television sets and the service of two-way radio equipment. He has held a business radio license or its equivalent continuously since 1957, and also holds a radiotelephone first-class license. Stockard has four mobile radio units; three are installed in service vehicles and one is in his personal automobile. The control point for Station KLA-242 is in Stockard's retail store which is

---

[1] Neither party requested oral argument before the Board, and, in our view, oral argument would not assist in resolving this case.

located in a small shopping center in Beaumont. The transmitter and tower for Station KLA-242 are located about three miles from the control point on the grounds of the Zummo Meat Packing Plant, which comprises an area of several acres. These grounds consist of a fenced lot which can be entered through a gate located at the meat packing plant. During working hours the gate is open and unguarded. Coastal's tower is situated in about the middle of the packing plant's lot and, at the time of inspection in 1968, the tower was surrounded by a "chicken wire" fence with several breaks in it. The lot is adjacent to a residential area. Coastal's antenna is mounted on a tower which is 360 feet high, and its transmitter is located in one of two portable-type steel buildings located at the tower site. Several other licensees rent space at Coastal's tower, have their transmitters at the tower site, and have agreements with Coastal calling upon Coastal to provide necessary maintenance and required log entries. All of the inspections which resulted in the issuance of the Notices of Violation which are the basis for this proceeding were conducted by Barry L. Nadler, who is the Engineer-In-Charge of the Commission's Beaumont field office.

5. The first inspection involving violations, conducted on February 21, 1968, resulted from Nadler's observation at several times that the beacon light of the Stockard tower was not functioning and the determination that such malfunction had not been reported to the FAA, as required by Commission Rule 91.160.[2] Nadler's inspection of the station's logs revealed no evidence that the Federal Aviation Agency had been notified that the beacon light was not functioning. Nadler also observed that the paint on the tower has faded and deteriorated. Moreover, the door of the structure housing the transmitter was not locked, and, in the opinion of Nadler, presented a shock hazard to those not familiar with the equipment since the transmitter enclosures were not locked, although on cross-examination Nadler admitted that "in essence" these radios were no more dangerous than the ordinary home TV set. Nadler also attempted to examine the maintenance logs, but was told that they were in storage due to a recent renovation. The station logs were kept for the most part by Sandra Chessher, who worked as Stockard's secretary. She had responsibility for logging the initial routine call made each morning when Coastal opened for business. She made the entry as to the time that the tower lights had been observed and she was responsible for entries regarding the condition of tower lights. The latter entries were made by her on the basis of information obtained from Stockard who, presumably, made the observation. She usually obtained the information for these entries from his desk calendar. During some periods, the time of observation shown was during daylight hours. Sometimes the daily log entries were overlooked and they were made days after the fact. There were periods for which there were no logs, and logs were reconstructed for these periods. There are logs showing entries made by Chessher for days on which she was not at work. Stockard replied to this Notice with a detailed statement indicating that corrective measures had been or would be made soon.

---

[2] Although the licensee stated, in reply to the Official Notice of Violation issued as a result of this inspection, that he had notified the FAA of the malfunction, Nadler testified that he was told by an FAA representative that the agency had not been notified.

6. Nadler next inspected the station on September 30, 1968. This inspection revealed that the tower had not been painted and that the transmitter had not yet been made inaccessible. Moreover, the maintenance records were still unavailable. Stockard's reply stated that repainting of the tower had been contracted for and that a carpenter was making the transmitter enclosure secure. Stockard also enclosed the time sheets of the yearly inspection for the Commission's frequency and deviation checks, which revealed that the work was performed *subsequent* to the date of inspection.

7. Nadler's next inspection took place on January 14, 1969, after he had on several occasions observed that all lights of the licensee's tower were inoperative. The transmitter was again found to be "accessible to the public"—in violation of the Commission's Rules—and there was no copy of the current station authorization. In addition, the logs had not been maintained from December 25, 1968 through the date of inspection and, therefore, did not indicate the length or nature of the failure of the lights. Nadler testified that his examination of the logs indicated that entries had been made subsequent to his inspection of February 21, 1968, and back-dated to reflect information not present in the logs at the time of his inspection.

8. Stockard's reply again promised compliance with the Commission's Rules and Regulations. The absence of log entries was explained by the statement that the person responsible for their maintenance was absent due to illness and that the radio was not used "for several days at a time." Stockard stated that as of November 12, 1968, the Allied Tower Company, based in Houston, Texas, had painted and inspected the tower completely. He also stated that on January 16, 1969, inspection of the tower revealed a burned connection at approximately the 150 feet level that would "make and break depending on the vibration of the tower." Stockard further stated that connections were remade, all tower lights replaced and a new photoelectric unit installed. At the hearing, Stockard claimed that it was extremely difficult to get anyone locally to do tower repairs and that the weather conditions and amount of daylights hours also affects such work. Stockard also claimed that he had experienced great difficulty with the tower lights, particularly in January of 1969, and that during that time the lights could be burning one minute and off the next—due to the faulty connection. Finally, Stockard stated that during this period, the FAA had been notified "a couple of times".

9. In contrast to Stockard's testimony concerning the alleged difficulty of getting someone to repair his tower, Ronnie Branch, a Beaumont city employee who does tower repair work in his spare time, testified that on the day following the inspection (*i.e.*, January 14, 1969), Stockard telephoned him about repairing the tower and that he climbed the tower and replaced the bulbs on the same day, *after* his regular working hours. In contrast to Stockard's claim as to faulty connections, Branch stated that aside from replacing the bulbs no other work was required to be done on the tower. He also stated that he had performed the same service for Stockard on a prior occasion.

10. At the next inspection on November 25, 1969, Nadler found the following violations: the transmitter building was secured by only a small piece of wire; the logs failed to reflect the required quarterly checks or the names and periods of duty for the persons keeping the log for the period of November 21, 1969, through the date of inspection; there was no transmitter identification card attached to the transmitter; and the station logs failed to disclose the required annual transmitter measurements. Stockard's reply again promised compliance. During the inspection at the control point, Nadler was informed orally that the logs relating to the daily tower observations had been moved to a new address, but when Nadler called at the address, the logs were unavailable. On December 9, 1969, Stockard replied, stating that corrective measures had been taken.

11. On December 7, 1970, Stockard's application for the renewal of his license for Business Radio Station KLA–242 was granted by the Bureau. In granting the renewal, however, Stockard was advised by letter that the application had been under study in view of the series of Official Notices of Violation and the repetition of many of the violations. The letter informed Stockard that the Commission would continue to maintain the records of his past violations as a part of the permanent files and that any further violations of the Rules in the future "will, together with your past record, be most carefully examined to determine whether your license should be revoked for cause."

12. A further inspection of Stockard's transmitter was made on May 13, 1971. Nadler had observed prior to that date that all tower lights except the beacon light were out, and at the inspection confirmed that they had been inoperative since April 8, 1971. Moreover, it was found that the current station authorization was not posted at the control point and that there were no records of required periodic transmitter measurements for the year 1970. In reply, Stockard stated that he did not have the license posted because he had put it in his desk to remind him to get it framed and to have a photostatic copy made to have posted at the transmitter. In response to the Notice of Violation for failure to have records of transmitter measurements, Stockard submitted photostatic copies of time sheets which showed that the necessary measurements had been taken by C. L. Carpenter, an employee of Coastal, on November 9, 1970. Stockard also stated that "Records of transmitter measurement made in November, 1970, were on file in my office. As they were filed by my other secretary, Mrs. Lee, who was on duty at the time, did not know where they were. Enclosed are photostatic copies of these records."

13. Carpenter testified at the hearing, and his testimony conflicts with Stockard's representations to the Commission. According to Carpenter, sometime before May 24, 1971, Stockard told him that he could not find the record of transmitter measurements which had allegedly been made in November, 1970. Stockard told Carpenter to make reports to cover the work he had done. Carpenter had made repairs on one unit which was installed in a new vehicle. The report of this work was found bearing the date "November 9, 1970". It was Carpenter's recollection that on that same day he had made the necessary

measurements on the other three units. He prepared the work order requested by Stockard and dated it November 9, 1970. These were the work orders which were submitted to the Commission by Stockard and which were supposed to have been prepared in November, 1970.

14. Stockard's reply of May 24, 1971, also stated that he had placed an order with Mik-Ron Towers, a local tower company, to repair the tower lights. However, according to Michael Wilkinson, who, with his stepfather, Richard Nini, and mother Mary Nini, had operated Mik-Ron Towers. The firm had gone out of business by April 8, 1971, the date on which Stockard claims he placed his order. Wilkinson said that they had no record of a phone call being received from Stockard, and that normally telephone messages would be taken and reduced to writing. Moreover, while admitting it was possible for a call to have been made without his knowledge, Wilkinson seemed convinced that he would have known of the message had it been received. The tower lights were not repaired until May 25, 1971, when Wendell Bradley, who is an electrician for the city of Beaumont, replaced the marker lights. Bradley stated that no wiring or electrical work needed to be done on the tower. Bradley testified at the hearing that Rayburn Davis, who is a fellow employee, had received a call from Stockard on May 24 requesting tower work. Because Davis had other commitments, Bradley agreed to do the work on the following day, *after* normal working hours and on a week day. This testimony, along with that of Ronnie Branch's,[3] substantially belies Stockard's claimed difficulty in accomplishing tower repairs.

15. Stockard's tower is located in Beaumont, Texas, and minimum required altitude for flight of aircraft in that area is 1,000 feet. According to the FAA representative who testified at the hearing, the tower is located in a transitional area in the vicinity of two airports. In this area, flight is permitted to 700 feet altitude. Pipeline patrol aircraft fly with special waiver which permit them to go below the normally required minimum altitude; sometimes below 200 feet.

16. Finally, it is noted that during the course of the proceeding, the Presiding Judge inquired on February 11, 1972, whether Nadler has conducted an inspection since May 13, 1971 (the date of the last inspection), and, upon receiving a negative answer, the Judge decided that current information as to compliance should be available. He did state, however, that the inspection would "have no relevance to the issues and the order . . .". In answer to the Judge's question as to the time required, Nadler stated that he could conduct such an inspection "without checking the mobile units for frequency, everything like that, just records and compliance, 20 minutes, 25 minutes." Based upon this limited inspection, Nadler reported that he found the station in compliance with the Commission's Rules and Regulations.

DISCUSSION

17. Initially, it is important to note that the technical violations, which formed the basis for the Order to Show Cause (see paragraph 1,

---

[3] See paragraph 9, *supra*.

supra), were established on the record. This is not contested. These violations were numerous and repeated and basically unchallenged by Stockard; and, in light of the fact that Stockard was notified of the violations on each occasion, it must also be concluded that Stockard was in knowing and willful violation of the Commission's Rules over approximately a four-year period.[4] In addition, and equally serious, the nature and tenor of Stockard's replies to the Notices of Violations evidences a cavalier disregard for the Commission's Rules. For example, on several occasions Stockard's replies stated that corrections had been made or soon would be when, in fact, a later inspection revealed that such had not been the case. (See paragraphs 6, 10 and 12, *supra.*) Furthermore, despite Stockard's claimed difficulties in getting tower work done, the record shows that on at least two occasions, Beaumont city employees (acting in an unofficial capacity) responded on the day following Stockard's request for tower work. (See paragraphs 9 and 14, *supra.*) In addition, there are several instances of false log entries (see paragraph 5, *supra*), as well as the submission to the Commission of a false work order for transmitter measurements (see paragarph 13, *supra*). Finally, there is conflicting testimony as to whether or not Stockard did in fact place an order with Mik-Ron Towers for repair work (see paragraph 14, *supra*).[5] In view of Stockard's past representations to the Commission, it is not unreasonable to find that Stockard did not, as he alleges, make the phone call to Mik-Ron. However, it is not necessary to reach that conclusion because there are other instances of misrepresentation shown on the record. See *e.g.*, paragraphs 5, 6, 8, 12 and 13, *supra*. Suffice it to say that the record as a whole casts doubt on the credibility of Stockard's testimony on this matter.

18. Stockard attempts to minimize the hazards his rules violations might have caused to air navigation by the improperly lighted antenna and to persons on the ground by his failure to make the transmitter inaccessible by arguing that no one was, in fact, injured. The Board, however, finds this contention unacceptable. Stockard's arguments that there was little chance of anyone being hurt because he violated the antenna lighting rules "would, in effect, permit each licensee to determine whether [his] antenna is an aviation hazard, and is, of course, untenable. The antenna lighting rules set minimum standards which licensees are required to observe. The Commission has always considered as serious violations failures to conform with the Commission's Rules pertaining to antenna structures because of the *potential* dangers to aviation created by such violations. . . ." *Radio Beaumont, Inc.*,

---

[4] The Judge's conclusion, that "at the time of the hearing . . . [Stockard] was once again in full compliance with the Commission's Rules", can have no bearing on the outcome of this case. First, the inspection was not thorough. Second, the Judge had stated on the record that the inspection would have no relevance to the issues and order. See paragraph 16, *supra*. Finally, Stockard's apparent compliance at this inspection is clearly outweighed by his numerous past violations and misrepresentations.

[5] It is well established that false statements given in response to Official Notices of Violations and adhered to throughout the hearing process can be of far greater significance than the rules violations themselves. See, *e.g.*, *Vinita Broadcasting Co., Inc.*, 30 FCC 2d 458, 22 RR 2d 195 (1971); and *Nick J. Chaconas*, 28 FCC 2d 231, 21 RR 2d 576 (1971). The Commission simply must be able to rely on the candor of its licensees, whether it be during the inspection stage, or when the licensee responds to a Commission inquiry, or when the licensee makes representations at hearing. *WOKO, Inc.*, 329 U.S. 223 (1946); *Lebanon Valley Radio, Inc.*, 35 FCC 2d 243, 258, 24 RR 2d 586, 604 (1972), review denied FCC 73-226, released March 2, 1973.

13 FCC 2d 965, 966, 13 RR 2d 1069, 1071 (1968). (Emphasis added.) See *Athens Broadcasting Co., Inc.*, 27 FCC 2d 7, 20 RR 2d 1115 (1971). The same reasoning would apply to Stockard's failure to properly secure his transmitter and make it inaccessible to outsiders. The fact that no one was actually injured by Stockard's failings is clearly beside the point. *Radio Beaumont, Inc., supra.*

19. Stockard also argues, apparently for the first time in this proceeding, that Nadler and he are involved in a "personality conflict" and that Nadler "was out to damage" him. To support this, Stockard alleges that his tower did not need painting in 1968, and when he was required to do so it amounted to a "fine". Stockard also alleges that "within one hour" after hearing of the Administrative Law Judge's "adverse ruling", Nadler began a "direct attack on the local attorney for Mr. Stockard. . . .", who owns a 600′ tower in the area, by "calling the customer on the tower and demanding that the tower be painted." However, none of these allegations are supported by the record. Therefore, they do not provide any basis for excusing or overcoming the numerous and unchallenged rules violations that were committed by Stockard, as well as the various misrepresentations made by him.

20. In view of the foregoing, the Board is of the opinion that a clear pattern of sustained disregard for the Commission's Rules and Regulations has been shown by Stockard, indicating a potential for future non-compliance. Thus, it is our considered judgment that any sanction less than revocation could not satisfy the public interest standard. See *Armond J. Rolle*, 31 FCC 2d 533, 22 RR 2d 821 (1971), review denied FCC 72–35, released January 14, 1972. This is true even though revocation is recognized to be a severe sanction. *Roy A. Filbert*, 6 FCC 2d 883, 9 RR 2d 569 (1967). It should be emphasized that the Board's conclusion is dictated largely by the fact that the limited assurances given by Stockard in the past have consistently been followed by further violations. See *L. G. Graves*, 11 FCC 2d 763, 12 RR 2d 437 (1968). The Judge concluded that "[t]he particular violations charged in 1971 which actually precipitated this proceeding are not so serious as to warrant as extreme a penalty as revocation. . . ." We disagree with the Administrative Law Judge's reasoning. First, the fact that Stockard is now in compliance can have no bearing on the outcome of this case. See note 5, *supra*. Second, we believe that Stockard's violations *after* the Bureau renewed his license in 1970 are particularly egregious in view of the fact that the Bureau pointedly warned Stockard that any further violations would place his license in serious jeopardy (see paragraph 11, *supra*).[6] Finally, Stockard's contention notwithstanding,[7] the Presiding Judge did not make demeanor findings in this case.[8] Therefore Stockard's credibility must be determined on the basis

---

[6] In this connection, the Board agrees with the Bureau that the 1970 renewal of Stockard's license can in no way prevent consideration of Stockard's prior violations. *The Courthouse Broadcasting Co.*, 21 FCC 2d 792, 18 RR 2d 616 (1970).

[7] In his brief, Stockard states that "the only way the full truth can be determined in a situation such as this one, obviously is by hearing the witnesses in person, watching their attitudes and demeanor, and judging what to believe. The [Administrative Law Judge] did just that. . . ."

[8] *Cf. Carbon Emery Broadcasting Co.*, 22 FCC 584, 12 RR 1268 (1957), where the Commission stated that, "Where the facts are otherwise clear and reliance upon demeanor is not essential to the decision, the Commission feels that the demeanor factor should be employed with considerable restraint, if at all."

of record evidence, and, as previously indicated, the evidence does not favor Stockard in this regard. Compare *Carol Television Corp.* (*WCIX-TV*), 29 FCC 2d 266, 274 n.12, 21 RR 2d 1114, 1122 n.12 (1971).

SUMMATION

21. In sum, the Board is of the opinion that the Presiding Judge erred in minimizing Stockard's numerous rules violations and in dismissing the Order to Show Cause. In all cases, the ultimate question is "the relationship of the remedy to the misconduct", *Radio Broadcasters, Inc.*, 23 FCC 2d 209, 215, 19 RR 2d 213, 220 (1970). In this case, the Bureau has proved: (a) that Stockard violated stated Commission Rules on numerous occasions over a period of time; (b) that he continued to violate the Rules after his license had been renewed with a warning; and (c) that he made misrepresentations to the Commission concerning the violations. Given these facts, revocation is the *only* proper remedy. *Armond J. Rolle*, *supra*. Neither the severity of the sanction nor the size of Stockard's business and its "inept" operation [9] undermines the conclusion that the public interest, convenience and necessity would be better served by revocation of Stockard's business radio service license. There are thousands of licensees in the Business Radio Service and the Commission must be able to rely upon them to comply with the Rules and Regulations and to be candid with the Commission to effectively regulate this service. Enforcement of the regulations would break down completely if compliance could be obtained only by means of a field hearing and only when a licensee was confronted by the ultimate penalty.[10]

22. Accordingly, IT IS ORDERED, That, effective November 16, 1973, the business radio station license, call sign KLA-242, of Louis C. Stockard, d/b as Coastal Electronics Company, IS REVOKED; and that a copy of this Order of Revocation SHALL BE served by Certified Mail, Return Receipt Requested, upon Louis C. Stockhard at his last known address, 3635 Calder Avenue, Beaumont, Texas 77706; and

23. IT IS FURTHER ORDERED, That operation of Radio Station KLA-242 SHALL BE TERMINATED upon the effective date of the license revocation specified above, and that, immediately upon

---

[9] The Judge characterized Stockard's "deficiencies" (*i.e.*, his numerous rules violations) as indicating "an operation that is often the characteristic of a small enterprise bound to comply with licensing requirements of the government. . . ." However, any inference that Stockard can be held to a lesser standard because he is a "small businessman" is contrary to established Commission policy. "The degree of responsibility imposed and the standard of conduct required are the same for all licensees, irrespective of their form on the relative size of their operations." *Continental Broadcasting, Inc.*, 15 FCC 2d 120, 131, 14 RR 2d 813, 825 (1968), reconsideration denied 17 FCC 2d 485, 16 RR 2d 30 (1969), affirmed 142 U.S. App. D.C. 70, 439 F.2d 580, 20 RR 2d 2126.

[10] As of August 31, 1973, the Commission had issued 126,880 licenses in the Business Radio Service. (Official Notice.)

such effective date of such license revocation, the licensee shall forward his radio station license to the Commission for cancellation.

JOSEPH N. NELSON,
Member, Review Board,
Federal Communications Commission.

NOTE.—Operation of the radio station specified above after the effective date of license revocation as ordered herein will be in violation of Section 301 of the Communications Act of 1934, as amended, and will subject any person operating such station to the penal sanctions specified in Section 501 of the Communications Act. Within thirty days of the release date of this Order of Revocation, a petition for reconsideration thereof by the Review Board may be filed pursuant to the provisions of Section 1.106 of the Commission's Rules, 47 C.F.R. 1.106, or an application for review thereof by the Commission may be filed pursuant to the provisions of Section 1.115 of the Commission's Rules, 47 C.F.R. 1.115.

APPENDIX

RULINGS ON EXCEPTIONS OF THE SAFETY AND SPECIAL RADIO SERVICES BUREAU TO FINDINGS OF FACT

Exception No.	*Ruling*
1	Granted in substance. The fact that Stockard holds a radiotelephone first-class license which attests to his expertise and permits him to service and maintain radio equipment has been considered by the Board.
2, 3, 4	Granted in substance. See paragraphs 4 and 5 of this Decision.
5, 6, 7, 8	Granted in substance. See paragraphs 4–16 of this Decision.
9–13	Granted.
14	Granted in substance. See paragraph 16 and footnote 1 of this Decision.

RULINGS ON EXCEPTIONS TO CONCLUSIONS

1	Granted. The Presiding Judge's conclusion is not supported by the record.
2	Granted. Whether or not Stockard was a "source of . . . difficulty" to the FCC, as the Judge concluded, is clearly without relevance. The major questions in this proceeding are whether Stockard did, in fact, violate the Commission Rules and whether he made misrepresentations to the Commission.
3	Granted in substance. See ruling on Exception 1.
4	Granted in substance. See paragraphs 11 and 20, and note 7 of this Decision.
5	Granted in substance. See paragraphs 12, 13, 14 and 17 of this Decision.
6	Granted in substance. See paragraph 21 and footnote 4 of this Decision.
7	Granted in substance. See our ruling on Bureau Exception No. 14, *supra.*
8	Granted in substance. See paragraphs 17–21 of this Decision.

F.C.C. 72D-38

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
LOUIS C. STOCKARD, D.B.A. COASTAL ELECTRONICS CO., 3635 CALDER AVENUE, BEAUMONT, TEX. 77706
Order to Show Cause Why The License For Radio Station KLA-242 in the Business Radio Service Should Not Be Revoked
Docket No. 19384

APPEARANCES

Richard N. Evans, Esq., on behalf of Louis C. Stockard, d/b as Coastal Electronics Company; and *Virgil Tacy, Esq.*, on behalf of the Chief, Safety and Special Radio Services Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER ERNEST NASH

(Issued June 5, 1972; Released: June 7, 1972)

FINDINGS OF FACT

1. Louis C. Stockard, licensee of radio station KLA-242 was directed by Order released December 6, 1971, to show cause why his license should not be revoked. KLA-242 is licensed in the Business Radio Service.

2. The Order to Show Cause was adopted by the Chief, Safety and Special Radio Services Bureau upon consideration of a number of alleged violations of the Commission's rules which had been observed in the course of six inspections of KLA-242 which had taken place over a period between 1967 and 1971. These inspections were conducted on January 9, 1967; February 21 and September 30, 1968; January 14 and November 26, 1969; and May 13, 1971. Official Notices of Violation were mailed to the licensee after each of these inspections. These Notices specified the infractions which had been observed and which the licensee was called upon to correct. These violations were specified in the Order to Show Cause as follows:

> 1. On January 14 and November 26, 1969, the licensee had not provided an executed Transmitter Identification Card (FCC Form 452-C) or a plate of metal or other durable substance, legibly indicating the call sign and the licensee's name and address, readily visible for inspection at the transmitter location, in repeated violation of Section 91.156(b) of the Commission's Rules.
>
> 2. On May 13, 1971, the current station authorization or a photocopy thereof was not posted at the principal control point of the station, in violation of Section 91.156(b) of the Commission's Rules.

> 3. The inspections conducted on January 9, 1967, January 14 and November 26, 1969, revealed that licensee had failed to maintain a log containing the name or names of persons responsible for the operation of the transmitting equipment each day along with the period of their duty for the periods December 25, 1968, through January 14, 1969; and November 21 through November 26, 1969, in violation of Section 91.160(c) of the Commission's Rules.
>
> 4. During the inspections on February 21 and September 30, 1968, as well as on May 13, 1971, the licensee failed to make available the station maintenance records in repeated violation of Section 91.160(a) and (b) of the Commission's Rules, and the absence of such records over the period of time specified above raises serious questions as to whether licensee, in fact, maintained the station in accordance with the Commission's Rules.
>
> 5. On November 26, 1969, the inspection revealed that the required transmitter measurements had not been made for a period in excess of one year, in violation of Section 91.108(a)(3); (b)(3); (c)(3) of the Commission's Rules.
>
> 6. On February 21 and September 30, 1968, and on January 14 and November 26, 1969, inspections showed that the licensee failed to provide a lock or otherwise make the base transmitter inaccessible to unauthorized personnel, in repeated violation of Section 91.107(a) of the Commission's Rules.
>
> 7. On February 21 and September 30, 1968, the tower paint required by licensee's station authorization was in a faded and deteriorated condition so that it no longer served the purpose for which it was intended, in repeated violation of Section 91.158(f) of the Commission's Rules.
>
> 8. On January 14 and November 26, 1969, there were no entries in the station records regarding the quarterly tower checks required by Section 91.158(c), in repeated violation of Section 91.160(e)(4) of the Commission's Rules, thereby raising serious questions whether, in fact, such checks were made.
>
> 9. The beacon light and all side lights on the radio tower were inoperative on February 21 and December 30, 1968, and January 4, 8, 11, 12 and 13, 1969; and on April 8 through May 13, 1971, all side lights were inoperative, in repeated violation of Section 303(q) of the Communications Act of 1934, as amended, and Sections 91.158 and 17.56 of the Commission's Rules. The tower was only partially lit on other dates in violation of the Commission's Rules.
>
> 10. During the inspections conducted on February 21, 1968, and January 14, 1969, no entries were found in the station logs reflecting the above-mentioned malfunctions including the time the daily checks of proper operation of the tower lights were made; the nature of any failure; the date and time the failure was observed or otherwise noted; the date, time, and nature of the adjustments, repairs, or replacements made; identification of Flight Service Station (Federal Aviation Agency) notified of the failure of any code or rotating beacon light not corrected within 30 minutes; and the date and time such notice was given, in violation of Section 91.160(e)(2)(3)(i)(ii)(iii)(iv) of the Commission's Rules, thereby raising serious questions whether in fact, such checks and notification were made.
>
> 11. During the inspection on November 26, 1969, it was found that there were no entries in the station log evidencing daily tower light checks from September 30 to November 26, 1969, in repeated violation of Section 91.160(e) of the Commission's Rules.

3. It was further charged in the Order to Show Cause that the licensee gave assurances that the violations specified had been corrected or that corrective measures were under way. Subsequent inspections revealed that the corrective actions had not been taken. The licensee was also charged with misrepresentation and lack of candor with respect to oral and written representations made to the Commission and with having had false entries in the station's logs. The licensee's violations were said to be particularly aggravated by reason of the fact that he is in the business of providing transmitter and tower space to other business radio licensees.

4. A prehearing conference was held at Beaumont, Texas, on February 10, 1972, followed by the evidentiary hearing which was con-

cluded on February 11, 1972. The record was closed on February 11, 1972.

5. Louis C. Stockard, d/b as Coastal Electronics Company operates a retail store and his business consists mainly of the sale of television sets and the service of two-way radio equipment. He has held the business radio license or its equivalent continuously since 1957.

6. Stockard has four mobile radio units, three of which are installed in service vehicles and one is in his personal automobile. The control point for station KLA–242 is in Stockard's retail store which is located in a small shopping center. The transmitter and tower for station KLA–242 are located about three miles from the control point on the grounds of the Zummo Meat Packing Plant. Zummo's lot comprises an area of several acres. It is a fenced lot which can be entered through a gate located at the meat packing plant. During working hours the gate is open and unguarded. Coastal's tower is situated in about the middle of the packing plant's lot. This lot is located adjacent to a residential area.

7. Coastal's antenna is mounted on a tower which is 360 feet high. Its transmitter is at the tower and is located in one of two portable type steel buildings located at the tower site. Several other licensees rent space on Coastal's tower, have their transmitters at the tower site and have agreements with Coastal calling upon Coastal to provide necessary maintenance and required log entries.

8. All of the inspections which resulted in the Notices of Violation which are the basis for this proceeding were conducted by Barry L. Nadler, who is the Engineer-In-Charge of the Beaumont, Texas, field office of the Federal Communications Commission. Nadler first inspected KLA–242 in late 1967 shortly after his arrival in Beaumont. His first inspection was cursory and did include a meeting with Stockard. Although Nadler did notice that the station log was not up-to-date he did not issue any Official Notice of Violation.

9. Five inspections which took place beginning February 21, 1968, to the inspection which took place in 1969, resulted in the observation of violations and Official Notices of Violation which are described in the list in paragraph 2 above. In his responses to these Official Notices of Violation Stockard did not deny the violations but rather gave assurances in each case that corrective action either was being taken or already had been taken. Accordingly, it is found and determined that the violations found at the inspections which took place on January 9, 1967; February 21 and September 30, 1968; January 14 and November 26, 1969 which were subsequently specified in the Notices of Violation sent to Stockard on January 10, 1967; February 26, and September 30, 1968; January 15 and November 26, 1969, and which are incorporated in the list of violations specified in paragraph 2 above did in fact exist.

10. At the time of the first inspection on February 21, 1968, the tower beacon light was not operating and this fact had not been reported to the Federal Aviation Administration. The paint on the tower was faded and deteriorated; the station logs showed the tower lights to be "O.K."; records as to frequency, modulation, power checks and repairs and service of equipment were not available; the building

in which the transmitter was located was not secured. Stockard gave assurances that these deficiencies would be or were corrected. Subsequent inspections showed that corrections had, in fact, not been made. These failures were attributed to the difficulty in obtaining the services of qualified tower people. It was claimed that while the building in which the transmitter was located was not securely locked it was in a fenced area located well away from the possible presence of casual passers-by who would also be repelled by the odors prevalent as a consequency of the business being conducted there. It was not until after several inspections and Notices of Violation and responses to these Notices that the tower beacon light was finally repaired, the tower painted and the transmitter building properly secured.

11. Logs were kept for the most part by Mrs. Sandra Chessher who worked as Stockard's secretary. She had responsibility for logging the initial routine call made each morning when Coastal opened for business. She made the entry as to the time that the tower lights had been observed and she was responsible for entries regarding the condition of tower lights. Entries regarding tower lights were made by her on the basis of information obtained from Stockard who presumably made the observation. She usually got the information for these entries from his desk calendar. During some periods the time of observation shown was during daylight hours. Entries were made showing tower lights functioning properly at times when this was not the fact and while repairs made to the tower and tower lights were entered in the log, deficiencies in the tower side lights and beacon were not shown although at times they were not operative. Sometimes the daily log entries were overlooked and they were made days after the fact. There were periods for which there were no logs and logs were reconstructed for these periods. There are logs showing entries made by Mrs. Chessher for days on which she was not at work.

12. All of the foregoing violations were known when Coastal filed its application for renewal in 1970. On December 7, 1970, Coastal's application for renewal was granted but Stockard was advised that the application had been held up because of the series of Official Notices of Violation and the repetition of many of the violations. He was told that the records of his past violations would be kept on file and that any further violations of the Commission's Rules would be examined in the light of his past record to determine whether his license should be revoked for cause.

13. KLA-242 was again inspected on May 13, 1971, by Nadler. He had observed for a period prior to that date that except for the beacon light on the tower its lights were out. Nadler also found that the current station authorization was not posted at the control point and that there were no records of required periodic transmitter measurements for the year 1970. Stockard was served with an Official Notice of Violation which specified the following violations:

1. Section 91.156(b). The current station authorization was not posted at the principal control point of the station.
2. Section 91.160(a). Station records containing the transmitter measurements required by Section 91.108 were not in evidence for the mobile units since December, 1969.

3. Section 17.56. From Licensee's station records and visual observations all side lights, exclusive of the beacon lamps, have been inoperative since April 8, 1971, through date of inspection. In addition only one set of side lights, of the two required, have been operative since November 23, 1970. (See also Section 91.158)

14. Stockard did not have the license posted because he had put it in his desk to remind him to get it framed and to have a photostatic copy made to have posted at the transmitter. In response to the Notice of Violation for failure to have records of transmitter measurements, Stockard sent in photostatic copies of time sheets which showed that the necessary measurements had been taken by C. L. Carpenter, an employee of Coastal, on November 9, 1970. With the records of transmitter measurements Stockard wrote and said that "Records of transmitter measurement made in November, 1970, were on file in my office. As they were filed by my other secretary, Mrs. Lee, who was on duty at the time, did not know where they were. Enclosed are photostatic copies of these records." According to Carpenter sometime before May 24, 1971, Stockard told him that he couldn't find the record of transmitter measurements which had been made in November, 1970. Stockard told Carpenter to make reports to cover the work he had done. Carpenter had made repairs on one unit which was installed in a new vehicle. The report of this work was found bearing the date November 9, 1970. It was Carpenter's recollection that on that same day he had made the necessary measurements on the other three units. He prepared the work order requested by Stockyard and dated it November 9, 1970. These were the work orders which were submitted to the Commission.

15. According to Stockard's reply of May 24, 1971, to the Official Notice of Violation he had placed an order with Mik-Ron Towers to repair the tower lights. According to Michael Wilkinson, who, with his step-father, Richard Nini, operates the business known as Mik-Ron Towers, the firm had gone out of business by April 8, 1971, the date on which Stockard claimed he placed his order. Wilkinson said they had no record of a phone call being received from Stockard, but it was possible for a call to have been made without Wilkinson's knowledge. The tower lights were not repaired until May 25, 1971, when Wendell Bradley, who is an electrician for the city of Beaumont, did the necessary work.

16. Coastal's tower is located in Beaumont, Texas. Minimum required altitude for flight of aircraft in that area is 1,000 feet. According to the representative of Federal Aviation Administration who testified at the hearing the tower is located in a transitional area in the vicinity of two airports. In this area flight is permitted to 700 feet altitude. Pipeline patrol aircraft fly with special waiver which permit them to go below normally required minimum altitudes. There is no evidence, however, that such planes operate in the Beaumont area at night.

17. Nadler was asked by the Examiner to conduct an inspection of station KLA–242 and report the results of that inspection for the record. Such an inspection was conducted and on February 11, Nadler reported that he found the station to be operating in full compliance of all requirements of the Federal Communications Commission.

CONCLUSIONS

1. Louis C. Stockard is a small businessman. He requires the use of a radio facility in his business. He has been licensed in the business radio service or its equivalent since 1957. His license, as do all FCC licenses, requires that he comply with Rules intended to assure proper utilization of the frequency he uses and the safety of the public. Since 1967, Stockard has been found to have committed numerous violations of these Commission requirements. He has been a source of some difficulty for those who have the responsibility for seeing to it that licensees comply with Commission Rules.

2. Stockard's most serious deviations occurred prior to the last renewal of his license in 1970. This renewal was granted with a warning that failure to comply with the Commission's Rules and Regulations could result in revocation of his license.

3. Six months after this latest renewal, the Engineer-In-Charge of the Beaumont office noticed that the side lights of the tower on which Stockard's antenna is mounted were not operating. An inspection of his facility brought on by discovery of this deficiency turned up two other violations. One violation was failure to post his current station authorization at his principal control point and the other was failure to have available required records of transmitter measurements.

4. It is the obligation of the licensee to operate in conformance with all Commission Rules. There is no doubt that Stockard committed numerous violations over a considerable period of time. His explanations as to the reason for these deficiencies indicate an operation that is sometimes slip-shod in a manner that is often the characteristic of a small enterprise bound to comply with licensing requirements of the government. Stockard does not give the impression of a licensee willfully and deliberately intent upon wrong doing for personal gain or otherwise. The Chief of the Safety and Special Radio Services Bureau took a reasonable and generous attitude towards Stockard when he granted renewal of the license in 1970 in spite of the history of violations and the effort which had to be expended before getting full compliance by Stockard at that time.

5. Counsel for the safety and Special Radio Services Bureau has argued that Stockard's violations are particularly aggravated by reason of his business. He provides service to other business radio licensees and he rents space on his tower. He also assumes responsibility for assuring compliance with the Rules on behalf of these other licensees.

6. In this proceeding there is the choice of either revoking Stockard's license or discharging the Order to Show Cause without assessing any sanction. Stockard's violations, taken in the context of his previous record, would certainly justify the imposition of some sanction such as a monetary forfeiture. But, the very fact that he is in the business of providing radio maintenance services aggravates not only his offense but would also aggravate the severity of the penalty of revocation.

7. Inspection of Stockard's facility at the time of the hearing showed that he was once again in full compliance with the Commission's Rules. Stockard's failings, while a source of frustration and irritation to those responsible for compliance, are more the result of ineptitude rather than a deliberate, conscious will to violate rules. On balance it would appear that the sanction of revocation would be too extreme a result. When faced with the more numerous and serious violations which preceded the inspection of May, 1971, the Bureau, acting with commendable restraint, decided to renew the license. The particular violations charged in 1971 which actually precipitated this proceeding are not so serious as to warrant as extreme a penalty as revocation. Stockard is now in compliance. Based upon consideration of all factors including Stockard's record before his latest renewal we are constrained to decide that Stockard's license should not be revoked.

Accordingly, IT IS ORDERED that unless an appeal to this Initial Decision is taken by a party or the Commission reviews the Initial Decision on its own motion in accordance with the provisions of Section 1.276 of the Rules, the Order to Show Cause IS DISMISSED and this proceeding IS TERMINATED.

ERNEST NASH,
Hearing Examiner,
Federal Communications Commission.

F.C.C. 73-973

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
INQUIRY INTO THE EMPLOYMENT POLICIES AND PRACTICES OF CERTAIN BROADCAST STATIONS LOCATED IN MARYLAND, VIRGINIA, WEST VIRGINIA, AND THE DISTRICT OF COLUMBIA

MEMORANDUM OPINION AND ORDER

(Adopted September 19, 1973; Released September 26, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT. COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. The Commission has before it for consideration responses to its inquiry into the employment policies and practices of forty-eight broadcast stations located in Maryland, Virginia, West Virginia, and the District of Columbia.[1]

2. By letters dated November 14, 1972, the Commission requested the licensees of a number of broadcast stations located in Maryland, Virginia, West Virginia and the District of Columbia to explain why their employment records were consistent with the rules governing equal employment opportunity. See 47 C.F.C. 73.125, 73.301, 73.599, 73.680, 73.793. Each station had eleven (11) or more employees and was located in an area with a minority population of at least five (5) per cent. Further, each station's annual employment profile report (FCC Form 395) indicated that they either: (a) employed no minorities in 1971 and 1972; (b) had a decline in minority employees from 1971 to 1972; (c) employed no women in 1971 and 1972; (d) had a decline in women employees from 1971 to 1972; or (e) showed a combination of the employment characteristics set forth in (a), (b), (c), and (d).[2]

3. The Commission has stated that, absent specific instances of discrimination, nonproportionate minority group employment at a broad-

---

[1] The stations subject to the Commission's inquiry were:

WASA & WHDG(FM)
WBOC & WBOC-FM
WCHS & WBES(FM)
WCIR & WCIR-FM
WCMS-AM-FM
WDON
WDVA
WFIR
WFMD & WFRE(FM)
WGH-AM-FM
WHAP
WINX
WJLS & WBKW(FM)
WKAZ-AM-FM
WLPM
WLVA
WNAV & WNAV-FM
WPRW
WRNL & WRXL(FM)
WSSV & WPLZ(FM)
WSWP (TV-ED)
WTID & WQRK(FM)
WTIP & WTIO(FM)
WTVR-AM-FM-TV
WVEC & WVEC-FM
WVEC-TV
WVPT (TV-ED)
WXIT

[2] An amended 1972 annual employment report for Station WCDA-TV disclosed that it did not fall within the criteria and, thus, an inquiry letter was not sent to the licensee. Also, Stations WSLC-AM-FM were removed from the inquiry list when it was discovered that the 1971 and 1972 annual employment profile reports were filed by a previous licensee.

cast station is insufficient to require an evidentiary hearing. *The Evening Star Broadcasting Co.* (WMAL-TV), 27 FCC 2d 824 (1971), *affirmed sub nom. Chuck Stone* v. *F.C.C.*, 466 F. 2d 316, *rehearing denied*, 466 F. 2d 331 (1972). However, it must be recognized that the courts have consistently held that statistics can raise appropriate questions regarding an employer's employment policies and practices. See, e.g., *Brown* v. *Gaston Dyeing Machine Co.*, 457 F. 2d 1377 (4th Cir. 1972); see also *Chuck Stone* v. *F.C.C.*, *supra.* The most significant question and the one of greatest controversy arises over what action the Commission should take where statistics indicate that minorities and women are not employed, are employed in insignificant numbers, or are underutilized.

4. As an interim measure, our processes will be aimed at resolving the problem by requiring appropriate remedial action. The precise nature of the remedial action we will take may vary depending on the circumstances. However, generally speaking, we will require licensees to maintain systematic communication with minority and female groups so that they will know that job opportunities are available to all persons on a nondiscriminatory basis. We will also require a reporting procedure so that we will have a basis for judging future performance.

5. In this matter, we have concluded that further inquiry into the employment policies and practices of the stations made the subject of the inquiry is unnecessary at the present time. However, based upon our review of the information before us, we are of the opinion that Stations WCHS, WGH-AM-FM, WKAZ-AM-FM, WFIR, WLPM, WTID, WQRK(FM), WSSV, WPLZ(FM) and WSWP(TV-ED) must place additional emphasis on seeking and encouraging minority and women applicants. Each of these stations employed 13 or more persons in 1972 and had several opportunities to hire for fulltime positions during the 12 month period preceding the filing of their 1972 annual employment profile reports. However, the stations employ few, if any, minorities.

6. The responses of the licensees contain no indication of discriminatory motive. However, the foregoing facts suggest that their recruitment efforts may be the primary cause for their poor minority employment profile. It is well established that employment policies and practices which appear to be fair and racially neutral are nonetheless unlawful if their effect is to carry forward or to perpetuate the effects of past discrimination. Accordingly, where a licensee has a poor minority or female employment profile, it is incumbent upon the licensee to make additional efforts to seek applicants from the affected groups. We will, therefore, require the licensees of these stations to (i) established a list of, and maintain systematic communication with, a number of local sources normally prepared to refer qualified or potential minority and women applicants to their stations each time a job opening occurs, and (ii) report to the Commission the affirmative action undertaken to seek and encourage minority and women applicants for each job vacancy filled.

7. In view of the above, we conclude that the public interest, convenience and necessity will be served by a grant of the applications

for renewal of licenses for Stations WASA, WHDG(FM), WBOC–AM–FM, WCHS, WCMS–AM–FM, WDON, WFIR, WFMD, WFRE(FM), WGH–AM–FM, WHAP, WJLS, WBKW(FM), WKAZ–AM–FM, WLPM, WLVA, WNAV–AM–FM, WSSV, WPLZ(FM), WTID, WQRK(FM), WVEC–AM–FM–TV, WSWP (TV–ED), WVPT (TV–ED), WXIT, and WTIP.[3]

8. Accordingly, IT IS ORDERED, That the following applications for renewal of licenses are granted for the remainder of the regular license term for the stations noted:

Call Letter, Location, and Applicant

WASA, WHDG(FM), Havre De Grace, Maryland, The Chesapeake Broadcasting Corporation.
WBOC, WBOC–FM, Salisbury, Maryland, Ocean City-Salisbury, Maryland, WBOC, Inc.
WCMS, WCMS–FM, Norfolk, Virginia, WCMS Radio Norfolk, Incorporated.
WDON, Wheaton, Maryland, WDON, Incorporated.
WFIR, Roanoke, Virginia, Beaverkettle Company.
WFMD, WFRE(FM), Frederick, Maryland, James L. Gibbons.
WHAP, Hopewell, Virginia, Radio Hopewell, Inc.
WJLS, WBKW(FM), Beckley, West Virginia, Personality Stations, Inc.
WLVA, Lynchburg, Virginia, WLVA, Incorporated.
WNAV, WNAV–FM, Annapolis, Maryland, Rau Radio Stations, Inc.
WTIP, Charleston, West Virginia, Chemical City Broadcasting Company.
WVEC, WVEC–FM, WVEC–TV, Hampton, Virginia, Peninsula Radio Corporation.
WVPT(TV–ED), Staunton, Virginia, Shenandoah Valley Educational Television Corporation.
WXIT, Charleston, West Virginia, Steere Broadcasting Corporation of West Virginia.

9. IT IS FURTHER ORDERED, That the applications for renewal of licenses filed by Rollins Broadcasting of Delaware, Inc., for Station WCHS; Hampton Roads Broadcasting Corporation for Stations WGH–AM–FM; WKAZ, Inc., for Stations WKAZ–AM–FM; Beaverkettle Company for Station WFIR; Suffolk Broadcasting Corporation for Station WLPM; Musicradio, Inc., for Stations WTID and WQRK(FM); Petersburg Broadcasting Company, Inc., for Stations WSSV and WPLZ(FM); West Virginia Educational Broadcasting Authority for Station WSWP(TV–ED) are granted for the remainder of their regular license term subject to the conditions that the licensees:

(i) Submit to the Commission within 30 days a list of local minority and women organizations, agencies, community leaders, schools and colleges with which they will maintain systematic communication each time their stations seek to fill a job position; and

(ii) Submit to the Commission, concurrent with the filing of their 1974 and 1975 annual employment reports (FCC Form 395), a detailed statement on the affirmative action undertaken to seek and encourage minority and women applicants for each job opening filled during each twelve (12) month period

---

[3] The Commission makes no findings at this time on the applications for renewal of licenses for Stations WRNL, WRXL(FM), and WTVR–AM–FM–TV, since petitions to deny raising employment discrimination allegations have been filed. Also, since other non-related matters remain to be resolved, the Commission takes no action at this time on the license renewal applications for Stations WCIR–AM–FM, WDVA, WINX, and WPRW.

preceding the pay period covered by the filing of their station's 1974 and 1975 annual employment reports, respectively, with minority and female persons designated.

10. IT IS FURTHER ORDERED, That the Acting Secretary of the Commission send a copy of this Memorandum Opinion and Order to each of the licensees designated in paragraphs 8 and 9 above.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT MULLINS, *Acting Secretary*.

F.C.C. 73-955

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notice of
APPARENT LIABILITY TO ENCHANTED LAND
BROADCASTING, INC., SANTA FE, N. MEX.

SEPTEMBER 11, 1973.

Certified Mail—Return Receipt Requested

ENCHANTED LAND BROADCASTING, INC.,
Radio Station KAFE–FM,
P.O. Box 4097,
Santa Fe, N. Mex. 87501

GENTLEMEN: This letter constitutes a Notice of Apparent Liability for forfeiture pursuant to Section 503(b)(2) of the Communications Act of 1934, as amended.

Station KAFE–FM was inspected on January 26, 1973, and thereafter was issued an Official Notice of Violation for the following:

Section 73.265(b) [should be 73.265(e)]

According to KAFE–FM operating logs, on August 27, 1972, September 6, 7, 8, 9, 10, 16, 17, 23, 24, and 30, 1972, and October 1, 1972, James Daniel McBride P3-15-22008 operated the station without a valid permit in that his Third Class Radio-telephone Permit was not endorsed for broadcast operation.

You replied to the Notice of Violation stating that the operator involved has since applied for and received a provisional operator certificate and would take an examination in April, 1973 for a broadcast endorsement for his third class permit. You further state that station management has checked all other operator licenses for broadcast endorsements and has added a check of operator licenses to station hiring procedure.

We have considered your reply and the circumstances of this case, and we have determined, that pursuant to Section 503(b)(1)(B) of the Communications Act of 1934, as amended, you have incurred an apparent liability for forfeiture in the amount of five hundred dollars ($500) for willful or repeated violations of Section 73.265(e) of the Commission's Rules. This proceeding is confined to those violations which occurred within one year prior to the date of the issuance of this Notice of Apparent Liability for forfeiture. Under Section 1.621 of the Commission's Rules, you may take any of the following actions in regard to this forfeiture proceeding:

1. You may admit liability by paying the forfeiture within thirty days of receipt of this Notice. In this case you should mail to the Commission a check or similar instrument for $500, made payable to the Federal Communications Commission.

2. Within thirty days of receipt of this Notice you may file a statement, in duplicate, as to why you should not be held liable or why the forfeiture should be reduced. The statement may include any justification or any information that you desire to bring to the attention of the Commission. After consideration of your reply the Commission will determine whether any forfeiture should be imposed, and, if so, whether the forfeiture should be imposed in full or reduced to some lesser amount. An order stating the result will be issued.

3. You may take no action. In this case the Commission will issue an order of forfeiture after expiration of the thirty-day period ordering that you pay the forfeiture in full.

Commissioner Robert E. Lee absent.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
DAVID E. HOUSKINS, GRAND RAPIDS, MICH.
Concerning Fairness Doctrine Re Station
WOTV

SEPTEMBER 21, 1973.

Mr. DAVID E. HAUSKINS,
1460 Van Auken SE.,
Grand Rapids, Mich. 49508

DEAR MR. HAUSKINS: This is in reference to your letter of July 6, 1973, regarding Television Station WOTV, Grand Rapids, Michigan.

In your complaint to the Commission, you allege that the licensee violated the fairness doctrine by refusing to broadcast a filmed statement by you after it had broadcast a filmed statement by your legally qualified opposing candidate for the school board in a newscast. You claim that your news release regarding campaign donations from the Grand Rapids Education Association Political Action Council (GREAPAC) to school board candidates was as "newsworthy" as your opponent's charges of sex discrimination in the school system; that on two occasions you conferred by telephone with a member of the licensee's news staff, who, you allege, indicated he would call you back concerning your request to be interviewed for a news program, but that on neither occasion did the news department employee contact you subsequent to your call; and that you made no further effort to contact any representative of the licensee, because you believed that "after two attempts at asking for equal time, it was pretty futile." You further charge that WOTV's failure to film a statement by you was an instance of managing the news, and state that "It is not the job of the News Department to manage the news but to report it."

The licensee responded to your complaint by stating that the appearance of Mr. Thomas Appel, your opponent in the campaign, occurred during a bona fide newscast, and fell within exceptions to the Section 315 of the Communications Act "equal opportunities" provision, and thus did not constitute a "use" of the station by a political candidate. The licensee further states that in its judgment your statement to the School Board was not a new controversial issue, and that it "had fully reported this criticism and responded thereto on an earlier occasion." The licensee contends that since your comments and those of your opponent dealt with different subjects, and you do "not allege unfair treatment of either subject matter by the station," no fairness doctrine issue has been raised.

You contend that the licensee violated the fairness doctrine by failing to broadcast your news release. The selection and presentation of specific program material are responsibilities of the station licensee, and, under the provisions of Section 326 of the Communications Act, the Commission is specifically prohibited from censoring broadcast material. Thus, the Commission does not direct licensees in their choice of programming nor will it attempt to substitute its judgment of news values for those of a licensee. Under the fairness doctrine, if a licensee presents one side of a controversial issue of public importance, it must afford reasonable opportunity for the presentation of contrasting points of view. The fairness doctrine does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming which, of course, includes statements or actions reported on news programs. Thus, both sides need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure, rather than the right of any individual to broadcast his views. It is the responsibility of the broadcast licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue. The Commission will review complaints to determine whether the licensee can be said to have acted reasonably and in good faith. For your further information, we are enclosing a copy of the Commission's Public Notice of July 1, 1964, entitled "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance."

Where a fairness complaint is made to the Commission, the Commission expects a complainant to submit specific information indicating a *prima facie* case of violation including: (1) the specific issue of a controversial nature of public importance broadcast; (2) the basis for the claim that the issue was a controversial issue of public importance, either nationally or in the station's local area at the time of the broadcast; and (3) reasonable grounds for the claim that the station broadcast only one side of the issue in its overall programming. See *Allen C. Phelps*, 21 FCC 2d 12 (1969). You have not provided such information regarding the issues of sex discrimination, the payment of money to school board candidates, or the campaign itself.

As to your statement that the news has been "managed," although deliberate distortion, slanting or "staging" of news by licensees would be patently inconsistent with the public interest, in order for the Commission to commence action in this sensitive area, it must receive *significant extrinsic evidence* of such deliberate distortion as, for example, statements by individuals who have personal knowledge that a licensee ordered the news to be distorted. You have not furnished such evidence. The Commission's policy in this area is set forth in the enclosed letter to Mrs. J. R. Paul.

With respect to your claim that you were denied equal time after an opposing political candidate appeared on the station, please note that although a "use" of the broadcast station by a legally qualified candidate for public office gives rise to equal opportunity obligations on the part of the licensee, if a legally qualified candidate appears on a bona fide newscast, bona fide news interview, bona fide documentary, or on-the-spot coverage of bona fide news events, such an appearance is not deemed a use of a broadcasting station for purposes of Section 315. In this instance, it is undisputed that your opponent appeared during a bona fide newscast. Therefore it does not appear that there was a "use" entitling you to "equal opportunities" pursuant to Section 315.

We are enclosing for your further information copies of the Commission's Public Notices of August 7, 1970, and March 16, 1972, entitled "Use of Broadcast Facilities by Candidates for Public Office." These documents contain the provisions of Section 315 of the Communications Act, amendments enacted by the Congress, the Commission's Rules, regulations and guidelines promulgated thereunder, and representative rulings and interpretations. This material should serve to inform you, generally, as to the applicability and requisites of Section 315 in given situations.

In view of the foregoing, it appears that no further action by the Commission is warranted.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY,
Chief, Complaints and Compliance Division,
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
JOHN CERVASE, NEWARK, N.J.
Concerning Fairness Complaint Re Station WOR-TV

SEPTEMBER 19, 1973.

JOHN CERVASE, Esq., *423 Ridge Street, Newark, N.J. 07104*

DEAR MR. CERVASE: This will refer to your letter of June 12, 1973 concerning the fairness doctrine obligations which you believe were incurred by Station WOR-TV, New York, New York, as a result of its broadcast of the program "Black on White" on May 22, 1973. In particular, you state that the program in question featured an interview of Mr. Imamu Baraka by the show's host, Mr. Cliff Alexander, and that the "entire" show concerned the discussion of the construction of the controversial Kawaida Towers project in Newark, in which Mr. Baraka is a principal. You further state that the Kawaida Towers project is a controversial issue of public importance in the Newark area, that the program in question presented only one side of that issue, and that WOR has failed to present contrasting views in its overall programming.

Licensee responded to Commission inquiry on July 11, 1973 stating that the Kawaida Towers controversy is of public importance in the Newark area; that although the program in question involved an interview with Mr. Baraka, who represented the pro-Kawaida Towers side of the controversy, the station has presented various viewpoints on this issue in its overall pogramming as evidenced by the station's news programs of November 21, 1972, December 4, 1972, February 12, 1973 and March 6, 1973; and that the "Black on White" host, Mr. Alexander, has indicated an intent to continue coverage of this issue by scheduling appearances by individuals who hold opposing viewpoints.

The selection and presentation of specific program material are responsibilities of the station licensee, and under the provisions of Section 326 of the Communications Act the Commission is specifically prohibited from censoring broadcast material.

However, if a station presents one side of a controversial issue of public importance, it is required to afford reasonable opportunity for the presentation of contrasting views. This policy, known as the fairness doctrine, does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming which, of course, includes statements or actions reported on news programs. Thus, both sides need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure rather than the right of any individual to broadcast his views. It is the responsibility of the broadcast licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue. The Commission will review complaints to determine whether the licensee can be said to have acted reasonably and in good faith. For your further information, we are enclosing a copy of the Commission's Public Notice of July 1, 1964, entitled "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance."

Where complaint is made to the Commission under the fairness doctrine, the Commission requires a complainant to, inter alia, set forth reasonable grounds for concluding that the licensee in *his overall programming* has not attempted to present opposing views on the issues and whether the station has afforded, or expressed an intention to afford, reasonable opportunity for the presentation of contrasting viewpoints on that issue. *Allen C. Phelps*, 21 FCC 2d 12 (1969).

You have not set forth such reasonable grounds. Not only has WOR indicated that it has covered contrasting views in its news programs, a statement which you do not dispute, but it has stated that the host of "Black on White" intends to present individuals who are opposed to the Kawaida Towers project.

In view of the foregoing it cannot be concluded that WOR has failed to afford reasonable opportunity for the presentation of contrasting views on the Kawaida Tower issue, and no further Commission action appears warranted at this time.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

William B. Ray,
Chief, Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
NATIONAL CITIZENS COMMITTEE FOR BROADCASTING, WASHINGTON, D.C.
Concerning Fairness Doctrine Re Columbia Broadcasting System

SEPTEMBER 18, 1973.

TRACY A. WESTEN, ESQ.,
Stern Community Law Firm,
2005 L Street NW.,
Washington, D.C. 20036

DEAR MR. WESTEN: This is in reference to your complaint of August 16, 1973, on behalf of the National Citizens Committee for Broadcasting, concerning the action of certain CBS affiliates, not all of which you name, that did not broadcast the "Sticks and Bones" drama scheduled by the network for Friday, August 17, 1973, and the two episodes of the situation comedy "Maude," dealing with the subject of abortion.

You request that the Commission obtain from CBS the identities of all affiliates which did not clear the programs in question, and ascertain their reasons for these programming decisions. Under Section 326 of the Communications Act, and the First Amendment to the United States Constitution, the Commission is prohibited from censoring broadcast material. With the exception of appearances by legally qualified candidates for public office and other matters specifically covered by statute, such as obscenity, indecency, and lottery advertisements, the Commission does not direct its licensees in their selection of particular program material, nor may it either prohibit or compel the broadcast of any particular program. The licensee does not have to present programming material which it believes either will not serve the needs or interests of its viewers or will not do so as well as other programming material. It is thus constantly called upon to make choices between types of programming, and then, within each type, to choose the format and content. *Citizens Communications Center*, 25 FCC 2d 705, 707 (1970). If, as you request, the Commission were to conduct an investigation into the reasons for a particular programming decision, the chilling effect of such governmental action would certainly inhibit the robust, wide-open debate of ideas which you seek to encourage.

In regard to your claim that certain individual licensees may have failed to meet their obligations under the fairness doctrine, you are, of course, aware that where complaint is made to the Commission under the fairness doctrine, the Commission expects a complainant to submit specific information indicating, *inter alia*, reasonable grounds for the allegation that the station or network involved has presented one side of a controversial issue of public importance, and has not afforded, nor plans to afford, a reasonable opportunity for the presentation of contrasting views on that issue in its overall programming. As one court has recently observed:

> On a complaint under the fairness doctrine, the burden is not only on the complainant to define the issue, but also to allege and point specifically to an unfairness and imbalance in the programming of the licensee devoted to this particular issue. *It is not enough for the complainant to allege there is a controversial issue of public importance on which the complainant wants to be heard* . . . The essential element in invoking the fairness doctrine is that the licensee has not hitherto provided fair and balanced programming on this particular issue, and therefore, and only therefore, can the complainant assert a right for someone to be heard to rectify the existing imbalance. *Healey* v. *FCC*, 460 F. 2d 917 at 921 (D.C. Cir. 1972). [Emphasis supplied.]

Apart from broad allegations that some CBS affiliates failed to broadcast the programs in question, you have made no showing that any station has failed to meet its fairness doctrine obligation. Should you have specific detailed information which would support a claim that a particular licensee has failed in its overall programming to comply with the fairness doctrine, we will give the matter further consideration.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

William B. Ray,
Chief, Complaints and Compliance Division,
for Chief, Broadcast Bureau.

F.C.C. 73-998

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 15.309 OF THE COMMISSION'S RULES PERTAINING TO EMISSION LIMITATIONS FOR CERTAIN FIELD DISTURBANCE SENSORS	Docket No. 19685 RM-2000

REPORT AND ORDER

(Adopted September 26, 1973; Released October 2, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONER JOHNSON ISSUING A SEPARATE STATEMENT.

1. February 14, 1973, the Commission adopted a Notice of Proposed Rule Making in the subject proceeding.[1] The date for receiving comments closed on March 28, 1973 and for reply comments on April 6, 1973.

2. This proceeding was initiated in response to a petition for Rule Making filed by the Emergency Products Corporation (EPC)[2] to modify the emission limitations for spurious radiation of field disturbance sensors. The petitioner stated that the Commission's Rules which require spurious emissions to be suppressed at least 50 dB below the level of the fundamental were impractical and to construct an equipment to these standards would lead to marketing a device which would not be economically viable.

3. In the argument, petitioner alleged that many of the devices which were currently certified did not, in fact, comply with the Commission's technical standard for spurious emissions (§ 15.309(b)). He further stated that the less stringent requirements requested for spurious emission levels would establish a standard in the Commission's Rules which could be reasonably met by most manufacturers within the present state of the art of microwave power generation techniques.

4. The Commission pointed out in the Notice of Proposed Rule Making that a number of manufacturers had submitted measurements showing compliance with spurious limits of Section 15.309 (50 dB below the fundamental) which apparently does not support petitioner's argument that there is no practical way of complying with the present requirements. In its comment, Omni Spectra Incorporated, disputes the petitioner's contention that the present rules are not practical, and goes on to say that filters can economically be produced in large quantities to meet the applicable spurious emission levels set out

---

[1] Docket 19685, Notice of Proposed Rule Making adopted February 14, 1973 (38 F.R. 5262, 39 FCC 2d 713).

[2] RM-2000, Filed: June 6, 1972.

in Section 15.309. However, no information is provided about the technical characteristics nor about the cost of such filters. In the absence of such supporting data the Commission is reluctant to give a great deal of weight to the Omni Spectra argument.

5. The Central Station Industry Frequency Advisory Committee (CSIFAC) and the Security Equipment Industry Association (SEIA) state that they can not support a suppression requirement of 40 dB for a spurious level and recommend that the requirement be reduced to 30 dB below the fundamental. They further state that the 2500 uV/m spurious level proposed by the Commission is acceptable. The Johnson Service Company, Emergency Products Corp. and Solfan concur in the requirement that spurious emissions be limited to 2500 uV/m at 100 feet.

6. These comments point up a curious oversight in the Commission proposal since 2500 uV/m is precisely 40 dB below 250,000 uV/m, the maximum level of radiation permitted on the fundamental. The 40 dB suppression requirement for harmonic and other spurious emissions is redundant in view of the alternative proposal that suppression below 2500 uV/m is not required. Recognizing this, we have eliminated the 40 dB suppression requirement and have retained only the absolute limit of 2500 uV/m in the rules adopted herein. However, for reasons discussed below, this change is made only for harmonically related emissions, and not for other spurious emissions.

7. AT&T agreed with the 2500 uV/m level for harmonically related spurious emissions; however it recommends that, for spurious other than harmonics, the original 50 dB suppression requirement be retained. These sensors, AT&T argues, will be operating near many microwave communications links and the more stringent spurious requirement will reduce the probability of interference to such systems. No reply comments were received in opposition to the AT&T proposal. The Commission has therefore restricted the relaxation in emission limits to apply only to emissions on harmonics of the fundamental, and is retaining the tighter specification, the 50 dB suppression requirement now in the rules, for emissions that are not harmonically related to the fundamental.

8. The Johnson Service Company also recommends that the 2500 uV/m spurious level proposed by the Commission for equipments operating at 10,525 and 22,125 MHz be applied to equipments operating at 2450 MHz and 5800 MHz. This recommended reduction in spurious limitations is based on the similarity in application of these devices to those operating at the higher frequencies and the lower field strength set out for devices operating at 2450 MHz and 5800 MHz. The above reasons are not sufficient of themselves to permit the Commission to act positively on this recommendation. We require information describing in detail the technical aspects of the problem, the effect of the higher level of spurious emissions on present radio services and a statement with supporting comments describing why such a rule change would be in the public interest. This information is not available to the Commission at this time and consequently we are not able to accommodate this recommendation within the scope of this proceeding.

NONCOMPLYING UNITS

9. Omni Spectra stated that they have reason to believe the allegations made by EPC concerning noncomplying devices are valid and recommends that the Commission determine that manufacturers are producing devices which meet the certification requirements. The Commission indicated in the Notice of Proposed Rule Making that the matter of noncomplying devices would be investigated separately and not included within the scope of this proceeding. However, because this matter has been the subject of further comment we feel it appropriate to discuss our plans for this investigation. Our measurement facilities have been extended to 40 GHz by the procurement of additional measurement equipment. Our Laboratory Division has prepared a procedure for testing field disturbance sensors. We are currently testing a field disturbance sensor to evaluate our test procedure and, measurement equipment. After the completion of these evaluation tests, field disturbance sensors currently being marketed will be examined for compliance with the rules in Subpart F of Part 15.

10. Authority for the amendments set out in the attached Appendix is contained in Sections 4(i), 302, 303(c), (g) and (r) of the Communications Act of 1934, as amended.

11. In view of the foregoing, IT IS ORDERED, effective November 9, 1973, that Part 15 of the FCC Rules is amended as set forth in the Appendix, attached hereto, and that this proceeding is TERMINATED in all respects.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

APPENDIX

Part 15 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

Section 15.309 is amended by revising paragraph (b) and adding a new (c) to read as follows:

§ 15.309 *Emission limitations.*

(a) For a field disturbance sensor operating within any frequency band listed in Section 15.307, the field strength of emissions on the fundamental shall be limited in accordance with the following:

Frequency (MHz):	*Field strength*
915, 2,450, 5,800	50,000 uV/m at 100 ft.
10,525, 22,125	250,000 uV/m at 100 ft.

(b) Spurious emissions from sensors operating in bands centered on 915, 2,450 and 5,800 MHz, including emissions on harmonics shall be suppressed at least 50 dB below the level of the fundamental; however, suppression below 15 microvolts per meter at 100 feet is not required.

(c) Harmonic emissions from sensors operating in bands centered on 10,525 and 22,125 MHz shall not exceed a level of 2,500 microvolts per meter at 100 ft. Spurious emissions except harmonics shall be suppressed at least 50 dB below the level of the fundamental; however, suppression below 15 microvolts per meter at 100 feet is not required.

NOTE.—For pulsed operation, measured field strength shall be determined from the averaged absolute voltage during a 0.1 second interval when field

strength is at its maximum value. Below 1000 MHz, the measurement bandwidth shall comply with the requirements set out in the American National Standards Institute Specifications C63.2–1963 and C63.3–1964. Above 1000 MHz the measurement bandwidth shall be 5 MHz.

SEPARATE STATEMENT OF COMMISSIONER NICHOLAS JOHNSON

The Commission has today taken a courageous stand, and flatfootedly come out in favor of modifying "the emission limitations for spurious radiation of field disturbance sensors."

There may be those who do not understand the significance of this action. Indeed there may be some who do not understand it at all. Numbered among them are the seven FCC Commissioners.

It's not that we haven't tried to present a reasoned opinion. Paragraph 6, boasting a commendable and somewhat unique degree of analysis for an FCC opinion, declares:

> 6. These comments point up a curious oversight in the Commission proposal since 2500 uV/m is precisely 40 dB below 250,000 uV/m, the maximum level of radiation permitted on the fundamental. The 40 dB suppression requirement for harmonic and other spurious emissions is redundant in view of the alternative proposal that suppression below 2500 uV/m is not required. Recognizing this, we have eliminated the 40 dB suppression requirement and have retained only the absolute limit of 2500 uV/m in the rules adopted herein. However, for reasons discussed below, this change is made only for harmonically related emissions, and not for other spurious emissions.

No, the problem is simply that no one has the foggiest notion what in the hell we're talking about.

Nowhere—in either the Commission opinion or the staff memorandum accompanying it—has any effort been made to explain the significance of this action. What kind of a widget, process, or equipment is involved? What function does it perform in our society? Who uses it? For what purpose? How is the present situation unsatisfactory? How will the rule in question affect it? Who is economically helped by the rule? Who bears the burden?

Upon inquiry, I discovered that we are talking about sensitive burglar alarms, and other detection devices—such as those that might count particular objects on an assembly line. These devices sputter out electrical energy and interference to radio receivers in all directions. Along with water and air pollution, we now have to deal with electromagnetic pollution as well. What today's order does is to spell out—in technical language—the levels of acceptable electromagnetic pollution that the manufacturers of these devices can build into their equipment. Their interest lies in high levels of permissible pollution—because it costs money to build better equipment that pollutes less. The public interest, and the interest of other businessmen using the frequencies in question, is to keep the pollution as low as possible consistent with the continued availability of the burglar alarms and other devices. I believe the Commission has struck that balance, and that's why I've voted for the order.

This Commission's curious sensors ruling stands as a classic comic caricature of itself. It almost has to be read to music (or at least out loud) to feel its full impact—perhaps "I Can't Get No Satisfaction."

To the Commission's credit it has promised me this will never happen again. Henceforth there will be at least one paragraph in each opinion providing a small clue as to the general subject at hand; a paragraph that can be read, and understood, by the 205 million Americans who pay our salary, the general press who interpret our agency to those citizens, the Senators and Congressmen who represent them, and, yes, even FCC Commissioners.

F.C.C. 73-1014

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In Re Application of
Harbor-Vue Cable TV, Inc.,
Dunkirk, N.Y.
For Certificate of Compliance
CAC-1348
NY444

Memorandum Opinion and Order

(Adopted September 28, 1973; Released October 3, 1973)

By the Commission: Commissioner Robert E. Lee absent; Commissioner Johnson concurring and issuing a statement; Commissioners H. Rex Lee, Reid and Hooks concurring in the result.

1. On October 6, 1972, Harbor-Vue Cable TV, Inc., filed the above-captioned application for certificate of compliance to begin cable television service at Dunkirk, New York. Harbor-Vue proposes to offer approximately 16,855 persons the following television broadcast signals:

WGR-TV (NBC, Ch. 2), Buffalo, New York
WBEN-TV (CBS, Ch. 4), Buffalo, New York
WKBW-TV (ABC, Ch. 7), Buffalo, New York
WUTV (Ind. Ch. 29), Buffalo, New York
WNED-TV (Educ. Ch. 17), Buffalo, New York
WICU-TV (NBC, Ch. 12), Erie, Pennsylvania
WSEE (CBS, Ch. 35), Erie, Pennsylvania
WJET-TV (ABC, Ch. 24), Erie, Pennsylvania
CBLT (CBC, Ch. 6), Toronto, Ontario, Canada
CFTO-TV (Ind. Ch. 9), Toronto, Ontario, Canada
CHCH-TV (Ind. Ch. 11), Hamilton, Ontario, Canada
CKCO-TV (CTV, Ch. 13), Kitchener, Ontario, Canada

On December 13, 1972, an "Objection of Great Lakes Communications, Inc.," was filed by the licensee of Station WICU-TV, Erie, Pennsylvania. On December 14, 1972, Taft Broadcasting Company, licensee of Station WGR-TV, WBEN Inc., licensee of Station WBEN-TV, and Capital Broadcasting Corporation, licensee of Station WKBW-TV, all Buffalo, New York (hereinafter referred to as petitioners), filed a joint "Partial Objection to Grant of Application for Certificate of Compliance." Harbor-Vue has responded to these objections.

2. Harbor-Vue initially alleged that its proposed system was located outside all television markets. Petitioners responded that the City of Dunkirk is not a community located outside all television markets,

but that actually a small portion of the city lies within the specified zone of the Buffalo, New York, television market (#24), and Harbor-Vue's proposal is thus not consistent with Sections 76.61 and 76.251 of the Commission's Rules. Harbor-Vue now concedes that it was initially in error, but requests a *de minimis* waiver because the area in question is only a small corner of Dunkirk which contains a beach bordering Lake Erie, a park, a sewage disposal facility, a small section of railroad tracks, one hundred twenty-three single family dwellings, and two occupied apartments. The disputed area contains approximately 376 persons out of a total of 16,855 persons in the City. Harbor-Vue claims that the situation in Dunkirk is analogous to that considered in *Diversified Communications Investors, Inc.*, FCC 72-963 37 FCC 2d 981 (1972), where a small portion of Littlefield, Texas, fell within the specified zone of Lubbock, Texas, but the Commission held the affected population to be so small as to be *de minimis*. Harbor-Vue asserts that the Dunkirk situation presents no erosion of the 35-mile zone concept nor any qualitative broadening of the *Diversified* ruling. Finally, it claims that Dunkirk is a more compelling case than *Diversified* because in *Diversified* the zone involved was of a minor market station, and minor markets generally have been deemed by the Commission to merit greater protection, while in the present case, the requested waiver involves one of the nation's largest markets.

3. In response to Harbor-Vue's waiver request, petitioners contend that Dunkirk is not a *de minimis* situation. While not contesting Harbor-Vue's statements as to the geographic and demographic composition of the area in question, petitioners state that this area comprises approximately 8½ percent of the land area of Dunkirk. Petitioners also contend that the present case is not analogous to *Diversified* because in that case, the section of the community in question was mainly farm land beyond the area of principal settlement of Littlefield, Texas, and contained eight or nine occupied dwellings, housing approximately 31 persons, while the portion of Dunkirk in question is part of the regular pattern of city streets and contains more people. Finally, petitioners maintain that it is not of decisional significance that the requested waiver involves a major rather than a smaller market.

4. In a supplement to its waiver request, Harbor-Vue states that the reference point for Buffalo, as contained in Section 76.53 of the Commission's Rules, is the location of the former main post office in Buffalo, and that the location of the main post office in Buffalo has been changed. Harbor-Vue submits that if computed from the coordinates of the present main post office, the 35-mile specified zone for the Buffalo market would fall 1.3 miles short of any portion of Dunkirk. Arguing that the Commission in the *Cable Television Report and Order* intended to establish reference points near or at the center of the designated community of a television market, Harbor-Vue contends that the location of the present main post office is much nearer the

center of Buffalo than the former main post office.[1] In response, petitioners submit that the change in the location of the main post office is irrelevant. They argue that Section 76.53 has established a reference point for Buffalo as well as for other communities, and as computed from that point, a portion of Dunkirk lies within the 35-mile specified zone of Buffalo. In reply, Harbor-Vue states that it is not requesting a formal change in the Buffalo reference point, but rather supplying additional information which, it believes, taken in conjunction with the other facts and arguments advanced, supports its waiver request.

5. While we do not agree that the case herein is completely analogous to the *Diversified* case, we do believe a *de minimis* waiver is appropriate. While the land area involved is significant (8.5 percent), we have in comparable situations accorded greater significance to population than to area served. Compare *North Central Video, Inc.*, FCC 66-473, 3 FCC 2d 874 (1966). In the present case, only about two percent of the total population of Dunkirk live within the affected area, and examination of detailed maps submitted by the parties reveals that the area in question contains a park, a beach bordering Lake Erie, railroad tracks, and a local sewage disposal facility. As a result, it appears that the potential for additional development of this area is slight.[2] Compare *General Electric Cablevision Corp.*, FCC 68-182, 11 FCC 2d 875 (1968); *Gainesville Cablevision Corp.*, FCC 67-675, 8 FCC 2d 465 (1967). Accordingly, in these circumstances, we will consider Dunkirk to be a community lying wholly outside all television markets. However, we emphasize that our judgment here does not turn on any percentages or other convenient formulas but rather on the totality of facts. Each such request for waiver must be judged in the context of its own peculiar circumstances.

6. Great Lakes Communications asks that a grant of Harbor-Vue's application be conditioned upon Harbor-Vue providing program exclusivity to WICU-TV *visa-a-vis* WGR-TV, Buffalo, New York. Great Lakes states that both WICU-TV and WGR-TV are primary NBC network affiliates, and it claims that WICU-TV provides a predicted Grade A contour over Dunkirk while WGR-TV provides only a predicted Grade B contour so that, pursuant to Section 76.91 of the Rules,[3] it is entitled to network program exclusivity as against WGR-TV. In support of this contention, Great Lakes cites *CATV and Station Coverage Atlas* (Television Digest, Washington, D.C. 1972 ed.),

---

[1] In Paragraph 76 of the *Cable Television Report and Order*, 36 FCC 2d 172 (1972), the Commission stated:

"We have delineated the areas to which particular rules will be applicable. We define the basic area as a zone of 35-mile radius, surrounding a specified reference point in each designated community in a market. A set of reference points fixing the center of the community to which each station is licensed is made part of the rules" (See Section 76.53).

[2] We note that, during this century, Dunkirk's population reached its zenith in the 1920 census (19,336), and has declined by 1400 between the 1960 (18,205) and 1970 (16,855) censuses.

[3] Section 76.91 of the Rules provides:

§ 76.91 Stations entitled to network program exclusivity.

(a) Any cable television system operating in a community, in whole or in part, within the Grade B contour of any television broadcast station, or within the community of a 100-watt or higher power television translator station, and that carries the signal of such station shall, on request of the station licensee or permittee, maintain the station's exclusivity as an outlet for network programming against lower priority duplicating at p. 134(b), which purportedly shows that WICU–TV provides a predicted Grade A contour over Dunkirk. In response to Great Lakes opposition, Harbor-Vue has submitted an engineering statement which concludes that WICU–TV's predicted Grade A contour does not reach Dunkirk. The Commission finds Harbor-Vue's engineering statement persuasive, and we therefore cannot accept Great Lakes contention that it is entitled to program exclusivity against WGR–TV.

7. Although not raised in the objections, we believe it appropriate to note certain variations in Harbor-Vue's franchise from the standards of Section 76.31 of the Commission's Rules. Harbor-Vue's franchise for Dunkirk was awarded by the Common Council of the city on August 3, 1970, after a full public proceeding. The initial term of the franchise is 10 years. Subscriber rates are established which can only be changed with the consent of the City Council after an appropriate public proceeding. A local office and service is specified. An annual fee of 5 percent must be paid to the city. Finally, we note Harbor-Vue's assurance that the system is already constructed. Only substantial compliance with Section 76.31 of the Rules must be demonstrated for franchises granted before March 31, 1972, and, measured by the criteria established by *CATV of Rockford, Inc.*, FCC 72–1005, 38 FCC 2d 10 (1972), *reconsideration denied*, FCC 73–293, 40 FCC 2d 493 (1973),[4] we find that this franchise substantially complies with Section 76.31 of the Rules in a manner sufficient to justify a grant of the above captioned application until March 31, 1977.

In view of the foregoing, the Commission finds that a grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Partial Objection to Grant of Application for Certificate" filed December 14, 1972, by Taft Broadcasting Corporation, WBEN, Inc., and Capital Cities Broadcasting Corporation IS DENIED.

IT IS FURTHER ORDERED, That the "Objection of Great Lakes Communications, Inc.," filed December 13, 1972, IS DENIED.

---

signals, but not against signals of equal priority, in the manner and to the extent specified in §§ 76.93 and 76.95.

(b) For purposes of this section, the order of priority of television signals carried by a cable television system is as follows:

(1) First, all television broadcast stations within whose principal community contours the community of the system is located, in whole or in part;

(2) Second, all television broadcast stations within whose contours the community of the system is located, in whole or in part;

(3) Third, all television broadcast stations within whose Grade B contours the community of the system is located, in whole or in part;

(4) Fourth, all television translator stations with 100 watts or higher power, licensed to the community of the system.

(c) If the signal of a television broadcast station licensed to a community in a smaller television market is carried by a cable television system, pursuant to § 76.57(a)(4), such signal shall, on request, be afforded network program exclusivity. This provision shall not be applicable to any signal authorized or lawfully carried by a cable television system prior to March 31, 1972.

[4] Appeal pending *sub nom., Winnebago Television Corporation v. FCC and U.S.A.*, Case No. 73–1561 (D.C. Circuit).

IT IS FURTHER ORDERED, That the above-captioned application (CAC–1348) filed by Harbor-Vue Cable TV, Inc., IS GRANTED and the appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

CONCURRING STATEMENT OF COMMISSIONER NICHOLAS JOHNSON

I concur in the granting of this *de minimis* waiver to Harbor-Vue. However, lest the *de minimis* character of such waivers becomes increasingly broadened to the extent of effectively repealing § 76.61 of the Cable Rules, I believe it important to note that I concur hesitantly in the granting of such waivers and have taken that action herein only because the facts of this case indicate that the area in question contains only about 2% of the population, that the demographies of Dunkirk indicate a decline in overall population over the past ten years, and that the potential for future development of the area appears slight. While the result of this waiver will avoid serious hardship to Harbor-Vue, I believe that waivers of this nature should be the exception rather than the rule and should always be dependent solely upon the *de minimis* character of the area in question.

F.C.C. 73-832

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Petition by
COMMITTEE FOR COMMUNITY ACCESS TO DENY ASSIGNMENT OF LICENSE OF STATION WROR-FM, BOSTON, MASS., FROM RKO GENERAL, INC. TO HEFTEL BROADCASTING—BOSTON, INC.

BALH-1740 and BASCA-528

AUGUST 2, 1973.

Mr. JACOB A. BERNSTEIN,
Committee for Community Access,
19 Regent Street,
West Newton, Mass. 02165

DEAR MR. BERNSTEIN: This is in response to your Petition to Deny and other related pleadings filed against the application to assign the license for Radio Station WROR-FM, Boston, Mass. from RKO General, Inc. to Heftel Broadcasting—Boston, Inc. (BALH-1740 & BASCA-528).

The subject application was accepted for filing by the Commission on September 29, 1972 and, accordingly, the last date for filing petitions to deny expired on November 2, 1972. Your Petition was received by the Commission on March 15, 1973, a full seventeen weeks after the statutory date for filing of petitions to deny had passed and is, therefore, subject to dismissal in accordance with the Commission's Rules. Since you have neither attempted to explain why the Petition was filed so late nor offered any reasons why your petition should be accepted at that late date, your Petition to Deny has been dismissed. However, in accord with past Commission practice, your late filed Petition to Deny will be treated as an informal objection to the application pursuant to Section 1.587 of the Commission's Rules. (*Morbro, Inc.*, 38 FCC 2d 1069 (1973) and *Tri-County Communications, Inc.*, 28 FCC 2d 709 (1971)).

A review of your petition and reply indicates that you believe a grant of the subject application would not be in the public interest for the following reasons:[1]

1. The assignee's selection of community leaders for its ascertainment survey showed an "anti-black bias" by failing to contact representatives of named minority organizations;
2. The assignee's proposed reductions in time given to news, public affairs, and "other" programming;
3. The "inferior quality" of the programs proposed by the assignee;
4. The assignee's musical format will be duplicative of other Boston FM stations.

---

[1] Except for your objections, the Commission has received no complaints or protests from the general listening public concerning the assignee's programming proposals or the loss of WROR-FM's present programming.

Your allegations have been considered in light of the applicant's responses, other material contained in the application and applicable Commission precedent and it has been determined, as will be discussed more fully below, that your allegations raise no substantial or material questions of fact which would require a hearing on this application.

You allege that the assignee's selection of community leaders failed to include key minority group representatives within the Boston area. The proposed licensee is given the responsibility for selection of community leaders and such discretion will not be upset absent a showing of abuse (*Miners Broadcasting Service*, 20 FCC 2d 1061 (1970)); and, moreover, "Licensees are not required to consult with every possible source of information in determining the needs, interests, and problems of the service area." (*WKBN Broadcasting Corp.*, 30 FCC 2d 958, 974 (1971)). In its community leader survey, the assignee contacted several individual leaders who have direct contact with the minority population of Boston, including the NAACP.

The fact that you believe other minority group leaders should have been consulted does not render the survey invalid. The assignee has shown a reasonable and good faith effort to consult with a representative cross-section of the community and we, therefore, conclude that you have failed to raise substantial or material questions of fact surrounding the assignee's ascertainment efforts.

You have also inferentially alleged that the applicant Heftel has not been candid in describing its efforts to contact other representatives of minority groups since some of these are in fact listed in the Boston telephone directory contrary to Heftel's claim. A careful review of all the charges and responses, including those to Commission letter of inquiry to the applicant, indicates that while certain of these groups were in fact listed in the Boston telephone directory, they were listed in a manner different from that expected by the applicant and because of its lack of familiarity with the manner in which these organizations were listed in the Boston directory, they were missed. For example, in your initial pleading you cite "Black United Front, METCO, BCMC . . ." (Pet. p. 11) as representatives of minority groups which were not contacted. In its opposition Heftel claimed that attempts were made, but that they could not be located in the local telephone directory. In your reply you point out that these groups were in fact listed in the directory, however in the following manner: "Black United Front is listed under *United*, METCO under *Metropolitan*, and BCMC under its full name Boston Community Media Committee." (Reply page 12) which is somewhat different from the usual name these groups go by. In light of the foregoing including Heftel's general unfamiliarity with the manner in which such groups are listed in the Boston directory, we have concluded that the above discrepancy raises no substantial or material question of fact requiring a hearing on this matter.

You next allege that the assignee's public affairs programming represents a reduction from that now broadcast by the assignor and that this reduction is not in the public interest. The Commission has never adopted quantitative standards by which to judge a licensee's performance. Instead, the amount broadcast has been left to the sound discretion of the licensee based upon his ascertainment of community problems. In the present application, the assignee will be operating WROR–FM without the aid of companion facilities (the assignor is the licensee of WRKO–AM and WNAC–TV in Boston). Therefore, not only will the public affairs programming of WRKO–AM continue to be available to many of WROR–FM's listeners, but the assignee's independent operation will also add a new media voice to the community thereby increasing the diversity of viewpoints in Boston. Your bare citation of what you deem to be an insufficient amount of news, public affairs and "other" programs without evidence that such performance will fail to meet community needs, fails itself to raise substantial or material questions of fact as to whether the station's operation will serve the public interest. Essentially, we find the assignee's non-entertainment programming proposals to be reasonable in light of the fact that the station will now be operated as an independent FM station, rather than as a part of an AM–FM–TV combination.

While you argue that the assignee's programming will be unresponsive to the needs of the community and will be of inferior quality, it must be remembered that in large urban markets it is impossible for the licensee to present programming to cover every need in detail. Thus, the Commission's reasonable approach to effectuating the public interest standard is to require the proposed licensee to analyze its ascertainment survey and use its judgment to determine which needs will be served through its programming. Therefore, a program series which discusses numerous community problems should not be deemed unresponsive or of inferior quality merely because it is not directed specifically to a minority group. The assignee's public affairs proposals provide for the discussion of the major problems in the area and will provide a forum for various groups in the community. We find that these programs will clearly respond to a variety of ascertained needs in the community and accordingly your objections have failed to raise substantial or material questions of fact.

Finally, you allege that the assignee's format will be duplicated by five other area stations and that this duplication will be contrary to the public interest. Generally speaking, the Commission in most instances leaves the selection of the entertainment format to the sound business judgment of the applicant since it is from this aspect of its programming that the funds necessary to maintain the operation of the station are derived. Only in those instances where an applicant proposes to eliminate a type of entertainment programming (e.g., Classical Music) not otherwise available to listeners in the market will the Commission and/or the Court question the applicant's judgment in this regard. Here, the applicant proposes to utilize an entertainment format consisting of "current popular music." This would appear to be substantially similar to the present licensee's format of a "blend of contemporary" music. Since it is clear that the applicant does not propose to eliminate a type of entertainment programming not otherwise available in the service area, the applicant's programming judgment will not be disturbed.

In conclusion, we find that your pleadings were untimely filed and have failed to raise substantial or material questions of fact that would show that a grant of this application would not be in the public interest. Accordingly, we have dismissed the Petition to Deny filed by you on behalf of the Committee for Community Access and have this day granted the application for the assignment of the license for Radio Station WROR-FM, Boston, Mass. from RKO General, Inc. to Heftel Broadcasting—Boston, Inc.

Commissioner Johnson dissenting; Commissioners H. Rex Lee and Reid absent; Commissioner Wiley issuing a separate statement to which Chairman Burch joins; Commissioner Hooks concurring in part and dissenting in part.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

SEPARATE STATEMENT OF COMMISSIONER RICHARD E. WILEY IN RE APPLICATION OF TWIN STATES BROADCASTING, INC. (WXEZ-FM), BALH-1561 AND APPLICATION OF HEFTEL BROADCASTING—BOSTON, INC. (WROR-FM), BALH-1740 AND BASCA-528 IN WHICH CHAIRMAN BURCH JOINS

I support completely the view that licensees and community groups should be encouraged to engage in dialogue and enter into negotiated agreements designed to improve broadcast service. Nevertheless, I am disturbed by the willingness of some licensees, in an apparent attempt to avoid the Commission's processes, to abrogate their obligations as public trustees and turn over to third parties responsibilities which are uniquely their own. In my opinion, the public is ill served if those who are licensed to serve their communities and held accountable for their stewardship relinquish, for purely private reasons, the obligation to make independent judgments that affect the public interest. I recognize that it is inherent in the process of negotiation that any accord attained between the parties may reflect their individual, private objectives. Nevertheless, the broadcast community at large, consisting of myriad diverse points of view, retains its own interest in such agreements and my abiding responsibility—as I see it—is to insure that the public interest not be sacrificed for personal gain. I am sufficiently concerned by these few instances, isolated though they may be, to note my individual intention not to countenance agreements that may result in an abandonment of public obligations to private interests.

F.C.C. 73-834

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of RKO GENERAL, INC., ASSIGNOR AND HEFTEL BROADCASTING-BOSTON, INC., ASSIGNEE For Assignment of License of Station WROR-FM, Boston, Mass.	BALH-1740 and BASCA-528

AUGUST 2, 1973.

HEFTEL BROADCASTING-BOSTON, INC.,
c/o Heftel Broadcasting Corp.,
Box 581,
Honolulu, Hawaii 96821

RKO GENERAL, INC.,
1440 Broadway,
New York, N.Y. 10018

GENTLEMEN: This refers to the application for Commission consent to the voluntary assignment of license for radio Station WROR-FM, Boston, Massachusetts from RKO General, Inc. to Heftel Broadcasting-Boston, Inc. (BALH-1740 and BASCA-528).

On June 30, 1973, the Boston Community Media Committee, Minority Caucus ("BCMC") and the assignee, Heftel Broadcasting-Boston, Inc., entered into an agreement relating to the employment and programming practices of WROR-FM's future operation plus provisions relating to monetary payments by Heftel to BCMC.

As you are well aware, the ultimate responsibility in the matters of programming and employment must be left with the licensee. As is emphasized in Attachment A of Section IV of the application (Statement of Programming Service):

> . . . broadcasters, mindful of the public interest, must assume and discharge responsibility for planning, selecting and supervising all matter broadcast by their stations, whether such matter is produced by them or provided by networks or others.

We have carefully considered the Heftel-BCMC agreement in light of the above policies and have concluded that the agreement would appear to improperly curtail the assignee's discretion in the areas of programming, program scheduling and employment practices.

In this regard, we wish to emphasize that this determination should in no way be considered as a retreat from the Commission's long standing policy of encouraging affirmative dialogues with all segments of a licensee's community in order to fulfill its public interest obligations. We have continually encouraged licensees to seek advice and guidance from minority groups to insure that adequate provisions are made to meet their particular programming needs and their rightful employment aspirations in the broadcast field. Finally, we have in the past had the opportunity to review agreements between licensees/applicants and public interest groups and have found them consistent with the licensee's overriding responsibilities and the public interest. For example, in *Democratic Party of Arizona*, 37 FCC 2d 526 (1972), we reviewed an agreement between the proposed assignee and the local Democratic Party which required that the assignee broadcast a minimum of 53% news and public affairs. In that case, we found applicant's programming commitment satisfactory as an *initial proposal only* and emphasized that the agreement, if construed as binding in futuro, would be contrary to both the licensee's statutory obligations and the public interest.

Your agreement, because of the specificity of its terms in the areas of both employment and programming generally, permits no latitude for such an interpretation on our part. Moreover, Sections II–B and C relating to specific programs would appear to be an abdication of licensee responsibility over the placement and content of those programs.

Further, Section III–(B) of the agreement requiring Heftel to pay BCMC an annual "subscription fee" of either $1000 of 1% of the net profits, whichever is greater, causes us serious concern. While generally speaking, the Commission has no objection to licensees reimbursing any one for services rendered in assisting it in the operation of its facility, this agreement would appear to go far beyond that since it in no way appears to relate to services rendered nor does it bind BCMC to do anything. Consequently, our approval of such a provision would be clearly contrary to the public interest.

Finally, we note that Heftel and BCMC state that this agreement is an integral part of the assignment application. While the parties may consider it as such, the Commission does not. In amending the application to include this agreement, Heftel has not amended the proposals contained in the application with regard to financing, programming or equal employment. Clearly then, the agreement is not essential to our public interest determination and therefore, from the Commission's point of view, is collateral to the application and the proposals contained therein.

Accordingly, the Commission has today found that the BCMC-Heftel agreement so curtails the licensee's responsibility in programming and employment areas, that the agreement would appear to be contrary to the public interest. The Commission by this decision does not want to inhibit further negotiations and/or consultations between Heftel and BCMC regarding programming and employment practices, and such other matters to which the parties may agree and which do not contravene the Commission's decision herein. However, any agreements must fully recognize that the licensee is to retain ultimate responsibility in the areas of programming, employment and compliance with equal employment statutes for the facility. The Commission also notes that its regulations on petitions for reconsideration of Commission action would allow BCMC thirty days within which to raise any public interest objections it may have before our action becomes final. Therefore, upon a finding that the assignee is fully qualified and that the public interest, convenience and necessity will be served by a grant of the subject application, the Commission has this day granted the WROR–FM assignment application and the assignee and BCMC are advised that the implementation of their agreement signed June 30, 1973, would be contrary to the public interest.

Commissioner Johnson dissenting; Commissioners H. Rex Lee and Reid absent; Commissioner Wiley issuing a separate statement to which Chairman Burch joins; Commissioner Hooks concurring in part and dissenting in part.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

SEPARATE STATEMENT OF COMMISSIONER RICHARD E. WILEY IN RE APPLICATION OF TWIN STATES BROADCASTING, INC. (WXEZ–FM), BALH–1561 AND APPLICATION OF HEFTEL BROADCASTING-BOSTON, INC. (WROR–FM), BALH–1740 AND BASCA–528 IN WHICH CHAIRMAN BURCH JOINS

I support completely the view that licensees and community groups should be encouraged to engage in dialogue and enter into negotiated agreements designed to improve broadcast service. Nevertheless, I am disturbed by the willingness of some licensees, in an apparent attempt to avoid the Commission's processes, to abrogate their obligations as public trustees and turn over to third parties responsibilities which are uniquely their own. In my opinion, the public is ill served if those who are licensed to serve their communities and held accountable for their stewardship relinquish, for purely private reasons, the obligation to make independent judgments that affect the public interest. I recognize that it is inherent in the process of negotiation that any accord attained between the parties may reflect their individual, private objectives. Nevertheless, the broadcast community at large, consisting of myriad diverse points of view, retains its own interest in such agreements and my abiding responsibility—as I see it—is to insure that the public interest not be sacrificed for personal gain. I am sufficiently concerned by these few instances, isolated though they may be, to note my individual intention not to countenance agreements that may result in an abandonment of public obligations to private interests.

F.C.C. 73-939

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of KOLOB BROADCASTING CO., INC., CARLSBAD, N. MEX. For Renewal of License of Station KCCC, Carlsbad, N. Mex.	BR-4552

SEPTEMBER 11, 1973.

Certified Mail—Return Receipt Requested
MARION JENKINS,
President, KOLOB Broadcasting Co., Inc.,
1206 West Mermod Street,
Carlsbad, N. Mex. 88220

DEAR MR. JENKINS: This refers to your license renewal application for standard broadcast Station KCCC, Carlsbad, New Mexico (BR-4552).

As you know, Station KCCC was granted a short-term renewal for the period ending August 1, 1973, because of your failure to exercise adequate supervision and control over a station-sponsored contest. We have reviewed your operation since July, 1972, and find no evidence of any of the conduct for which the short-term license was granted. We further find that you are legally, technically, financially and otherwise qualified to be a Commission licensee and that a grant of your present application would serve the public interest, convenience and necessity.

Accordingly, the application for renewal of the license for Station KCCC, Carlsbad, New Mexico, is granted for the remainder of the regular renewal period for New Mexico stations, *i.e.*, October 1, 1974.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73D-41

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of CARLOS A. LOPEZ-LAY, FREDERIKSTED, ST. CROIX, VIRGIN ISLANDS For Construction Permit	Docket No. 19387 File No. BP-18486

APPEARANCES

Howard Jay Braun, Esq., on behalf of Fajardo Broadcasting Corporation; *Martin R. Leader, Esq.*, on behalf of Carlos A. Lopez-Lay; *John C. Harrington, Esq.*, on behalf of Pan Caribbean Broadcasting Corporation; and *Sheldon Guttmann, Esq.*, and *David G. Richards, Esq.*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE ERNEST NASH

(Issued August 6, 1973; Effective September 27, 1973 pursuant to Section 1.276 of the Commission's Rules)

FINDINGS OF FACT

1. This proceeding was instituted on January 10, 1972.[1] It involved the mutually exclusive applications of Fajardo Broadcasting Corporation and Carlos A. Lopez-Lay. Fajardo's application was subsequently dismissed as a consequence of the approval of agreement between Fajardo and Lopez-Lay pursuant to which Fajardo's application was to be dismissed and Lopez-Lay was to reimburse Fajardo for a portion of its expenses.[2]

2. Lopez-Lay's application was retained in hearing for resolution of the following issues which are in whole or in part applicable to his application:

> 1. To determine the areas and populations which would receive primary service from the proposed operations and the availability of other primary aural (1 mv/m or greater in the case of FM) service to such areas and populations.
>
> 2. To determine the efforts made by the applicants to ascertain the community needs and interests of the area to be served and the means by which the applicants propose to meet those needs and interests.
>
> 4. To determine whether the transmitter site proposed by Carlos A. Lopez-Lay is suitable with regard to conditions which may exist in the vicinity of the antenna system and whether he will be able to adjust and maintain the directional antenna system as proposed.
>
> 7. To determine, in light of the evidence adduced pursuant to the foregoing issues which, if either, of the applications should be granted.

---

[1] Memorandum Opinion and Order, FCC 72-11.

[2] FCC 72M-1038, released August 11, 1972.

3. Prehearing conferences were held on March 9, 1972, April 26, 1972, July 19, 1972, and May 9, 1973. The hearing at which evidence was received and the record closed was held on June 5, 1973. Findings of fact and conclusions were submitted by the Broadcast Bureau and the applicant, but the Broadcast Bureau did not submit any findings of fact on the *Suburban* issue.

4. In its designation Order the Commission pointed out that Lopez-Lay proposes a two-element directional antenna to suppress the radiation towards co-channel station WRSJ, San German, Puerto Rico. The Commission went on to note:

> The calculated value of radiation in the null towards WRSJ is less than 1 mv/m and the MEOV is as low as 3.2 mv/m. In addition, we note that the terrain in the immediate vicinity of the site appears to be quite rugged and as a result reradiation and signal scatter may occur. In view of these considerations and since the proposed site is located less than one mile from the coastline, a question obtains as to whether a satisfactory proof of performance can be accomplished and whether in fact the proposed array can be adjusted and maintained within the proposed values of radiation.

5. Carlos A. Lopez-Lay (hereinafter applicant) requests authorization to construct a new Class II standard broadcast station at Frederiksted, St. Croix, Virgin Islands, on 1090 kHz employing 500 watts power, daytime only, and a directional antenna.

6. Frederiksted is situated on the west coast of St. Croix Island, the southernmost island in the Virgin Islands chain and is some 70 odd miles southeast of the Puerto Rican mainland. The only broadcast station authorized to Frederiksted is FM station WVIS, 106.1 MHz (Channel 291).

7. The population of St. Croix is 31,779, and the population of Frederiksted is 1,531—749 of whom are foreign born. Nearly all of the population of Frederiksted and St. Croix is composed of black persons.

8. There is very little unemployment in St. Croix, which is officially given as 1.5%. Since 638 of 980 persons over 21 years of age in Frederiksted are professionals, the record indicates that most of the interviewees were professional persons. Among the professionals interviewed, who are both community leaders and members of the general public, were doctors, lawyers, businessmen, educators, bankers, a sheep raiser, contractor, labor union official, and harbor union official.

9. The median age in St. Croix is 23.5 years; 13,354 persons are over 21 years of age; 12,939 are under 18 years of age; and 1,275 are over 65 years of age.

10. In Frederiksted city, the median age is 26.5 years; 980 persons are over 21 years old; 467 are under 18; and 123 are 65 years and older.

11. The applicant's survey of October, 1971, broke down as follows:

Sex

74 males; 79 females.

Employment

64 employed males, 10 self-employed males.
2 employed females, 4 self-employed females; 1 student female, 2 housewives.

Age

Males: 15 to 34 years—43; 35 to 64 years—30; 65 or over—1.
Females: 15 to 34 years—3; 35 to 64 years—6.

Residence

Frederiksted: 62 interviewees.
Christiansted: 21 interviewees.

Color

Males: Black—61; White—15.
Females: Black—6; White—3.

12. Nearly all of the persons interviewed were U.S. citizens. These, of course, included persons born in Puerto Rico. Fifteen of the interviewees were non-citizens. Since a vast majority of the population is composed of black persons, nearly all of the community leaders and members of the general public interviewed were black persons. The following white persons, community leaders and members of the general public, were interviewed:

Community leaders

Father O'Toole, Catholic Priest.
Dr. T. Evangelista, Medical Doctor.
Mr. Frank Padilla, Attorney.
Mr. Barry Hickson, President, Bank of America, V.I. Branch.
Dr. Manual Palaez, Medical Doctor.
Robert H. Ruskin, Attorney.
Manuel Guitierrez, Businessman.
Gloria Albino, Businesswoman.

General Public

C. E. Pearson, Housewife.
Elizabeth Smith, Electronics Specialist.
Jeanne B. Goodrich, Secretary.
Pierre Morelle, Gas Station Attendant.
Frank Batham, Automobile Parts Dealer.
William J. Alexander, Salesman.
Ausberto Martinez, Taxi Driver.
Carlos Garcia, Truck Driver.

13. During the period which the application has been pending, the applicant has conducted three surveys. The first was submitted in February, 1969, when the application was filed. A further survey was done in September, 1969, and another was done in October, 1971.

14. As the following summary of the surveys indicates, the applicant consulted with 285 members of the general public in Frederiksted, Christiansted and Charlotte Amalie. In addition, the applicant interviewed 61 community leaders from St. Croix, who were mostly from Frederiksted city, and to a lesser extent, Christiansted.

February, 1969

General public	150
Community leaders	13
Frederiksted	13

September 1969

General public	65
Community leaders	35
Frederiksted	14
Christiansted	21

October, 1971

General public	70
Frederiksted	27
Christiansted	29
Interviewed at work in Frederiksted but live outside Frederiksted	14
Community leaders	13
Frederiksted	7
Christiansted	6
Interviewed at work in Frederiksted but live outside Frederiksted	1

15. When the original surveys were made, the applicant relied upon 1960 *Census of Population* data. However, in determining the composition of Frederiksted and St. Croix, the applicant relied upon preliminary 1970 *Census of Population* data as it became available, and finally relied upon the final information for the 1970 Census.

16. The proposed 0.5 mv/m contour encompasses all of the Virgin Islands. The 0.5 mv/m contour includes 33,467 persons in a land area of 165 square miles.

17. Stations WKAQ, WAPA and WIAC in San Juan, WMDD in Fajardo, and WSTX in Christiansted, provide AM primary service (0.5 mv/m or greater) to all rural areas proposed to be served. All five stations provide primary service (2.0 mv/m or greater) to all urban areas proposed to be served. The 1970 U.S. Census shows those urban areas, all within the Virgin Islands, to be: Christiansted, St. Croix (3,020) and Charlotte Amalie, St. Thomas (12,200).

18. The proposed directional antenna array consists of two identical guyed towers with an overall height of 188 feet above ground, including beacon, spaced 170.5 feet apart on a line bearing 90 degrees true. The electrical length of the radiating elements is 72.5 degrees and the electrical spacing is 68 degrees. The parameters of the system produce a cardioid or bean-shaped pattern with the major lobe projected toward the east. Nulls occur at 263.5 and 276.5 degrees true with a minor lobe falling at 270 degrees true. The sector of minimum radiation is designed to protect Station WRSG, San German, Puerto Rico, 1090 kHz, 250 W, U. The parameters for the pattern area:

	Current ratio	Phase (degrees)
West tower (No. 2)	1.0	0
East tower (No. 1)	1	−112.5

The following calculated values of radiation and MEOV's are proposed for the directions indicated:

Direction	Calculated value mV/M	MEOV mV/M
East (major lobe)	195	
Northeast	178	
Southeast	178	
263.5° true	<0.1	
276.5° true	<.1	3.1
270° true (minor lobe)	.9	3.9

The proposed pattern RMS is 128.3 mv/m.

19. The ground system of each tower will consist of 120 radial copper wires evenly spaced, each 226 feet long and buried 6 inches deep. Where wires intersect they will be terminated and bonded to a copper strip located an equal distance from each tower. In addition, a 24′ x 24′ ground screen will be installed at the base of each tower.

20. The proposed transmitter site [3] is located on a mountain approximately 1.2 miles inland from the ocean and 1.5 miles northeast of Frederiksted. Ground elevation at the site is 600 feet above mean sea level.

21. Applicant's consulting engineer personally inspected the proposed site from the ground and from the air on March 3 and 4, 1972. This inspection established that the terrain to the east of the site is rolling with no sheer cliffs or overhangs and that there are no man-made metal objects such as water towers or power lines capable of re-radiation. He states that such terrain and its vegetation acts as an absorber of radio energy, rather than a reflector.

22. To the north and to the east of the proposed site, the terrain undulates between 400 and 600 feet above mean sea level for more than 1.5 miles. To the south the terrain drops to approximately 100 feet above mean sea level at 0.3 mile and from there to 1.5 miles stays at or below 100 feet above mean sea level. To the west the terrain slopes to 100 feet above mean sea level at 0.75 miles and then proceeds to taper off to sea level at the coast, a distance of 1.2 miles.

23. Although the proposed array is close to the ocean, applicant's consulting engineer is of the opinion that the array can be properly adjusted. Non-directional measurements can be made at low power to protect WRSG. Directional adjustment will be performed with WRSG off the air. A minimum of eight radials will be measured. Land and sea measurements will be made.

24. Along radials where land extends to less than 20 miles, boat measurements will be made. There are no reefs to impede such measurements out to 20 miles, and considering the curvature of the earth, the towers are within the line-of-sight at that distance. A surveyor and microwave distance measuring equipment will be used to establish the distances and bearings. The microwave distance measuring equipment will have a distance resolution of better than 0.05 miles. Measurements will be made at the highest structure of the boat, in the clear, with the signal level meter oriented towards the station. Although a fiberglass boat is preferred, applicant's consulting engineer deems a metal boat usable.

25. The close-in land signal levels are predictable from the proximity studies made by the applicant's consulting engineer, and these predicted signal levels will be correlated with the measured values. Since the close-in signal levels are sensitive to array variations, two monitoring locations, 263 and 277 degrees true will be utilized to indicate field variations. The phase variations will be monitored at approximately 280 degrees true on the coast of Puerto Rico, with WRSG off the air. With the field at 277 degrees true adjusted for minimum,

---

[3] Originally, applicant proposed a site located approximately 0.7 miles from the ocean, at an elevation of 90 feet above mean sea level, and situated generally where the terrain abruptly changes from gradually falling to sea level at the coast towards the west to sharply rising to 600 feet above mean sea level, 0.5 miles to the northeast. This proximity to the ocean along with the rugged terrain towards the northeast was a major reason for including issue No. 4 in this proceeding. By Order released August 11, 1972, the Presiding Judge accepted an amendment to change the location of the proposed site, 0.5 miles northeast.

the array can be monitored and its adjustments facilitated by use of the two close-in points and the one remote point—all on land.

26. A study based on varying the parameters of the proposed directional antenna array in the worst combination with respect to the reference tower (and incorporating an initial adjustment value of 2 mv/m) indicates that, before the MEOV would be exceeded,[4] the maximum permissible changes in current ratio and phase are ±0.5% and ±0.5°, respectively.

27. To maintain a constant check on the array parameters, applicant proposes to install a Potomac Instruments, Inc., model AM–19D antenna monitor with a current resolution of 0.1% and a phase resolution of 0.1°. The applicant proposes to use phase-stabilized transmission lines and high-grade components throughout, such as vacuum capacitors and oversize low loss coils, consistent with the state of the art. A minimum number of components will be used. Consideration will be given to connecting the towers directly to the transmission lines, after compensating for reactance, similar to the technique used at Station WDEE, Detroit, Michigan. The required phase shift will be achieved by appropriate transmission line length with adjustments at the common point rather than at the towers. Power division will be achieved with a capacitive power divider with no mechanical contacts. If necessary, the phasing cabinet will be kept at a constant temperature. The sampling loops will be bonded to the towers and the sampling lines will be of equal length. To further minimize the effects of small temperature variations, the transmission lines and the sampling lines will be buried about 10–20 inches deep.

28. Applicant's consulting engineer personally adjusted the three tower array of WCRK in 1957. He states that the terrain surrounding WCRK is similar to the terrain in the vicinity of the proposed site. He further states that it was possible to suppress WCRK's three minima to practically zero. His comparison of the two systems indicates that the proposed installation is more favorable. For example: Applicant proposes two towers instead of three for WCRK; applicant's terrain drops while WCRK's terrain rises approximately 120 feet within 0.5 miles; applicant has 2 minima, WCRK has 3; pattern shape, though not identical, is similar; WCRK involved question of protection to cochannel Station WIMA, Lima, Ohio, over an arc from 322 degrees to 355 degrees true. He concludes that since it was possible to adjust the WCRK array to near zero with three towers, with rising terrain within 0.5 miles, across a wide arc, it will be possible to adjust applicant's array with a superior installation having critical protection requirements across an arc of 1 degree or less.

29. The applicant's consulting engineer stated he will be retained by the applicant to implement the proposed facility. He further states

---

[4] The critical azimuth for protection of Station WRSG, San German, lies in the direction of 277 degrees true from the applicant's proposed transmitter site. This is essentially the only bearing of concern since to the south of WRSG its 0.5 mv/m contour is over water and to the north the attenuation of the soil diminishes the reach of that contour so that protection is afforded with considerably higher radiation from the proposed operation. Maximum permissible radiation at 277 degrees true is 4.3 mv/m. The MEOV at 277 degrees true is 3.1 mv/m which is equivalent to 4.4 mv/m per kilowatt.

he participated in the 720 kHz/780 kHz Las Vegas hearing and has studied numerous exhibits relative to directional antenna adjustments and maintenance and is thoroughly familiar with their content, and that such knowledge will be applied to the proposed array.

CONCLUSIONS

1. Carlos A. Lopez-Lay proposes to construct a new Class II standard broadcast station at Frederiksted, St. Croix, Virgin Islands to operate on 1090 kHz with a directionalized radiation of 500 watts, daytime only.

2. Frederiksted has a population of 1,531 and is located on the west coast of St. Croix, about 70 miles southeast of the Puerto Rican mainland. One FM station is presently authorized at Frederiksted. The proposed operation would, therefore, provide a second aural outlet.

3. Applicant would serve all of the Virgin Islands and all of the 33,467 [5] persons in a land area of 165 square miles within its 0.5 mv/m contour, both rural and urban would receive primary service. Five AM stations provide like service to the entire area.

4. The determination concerning whether Lopez-Lay has met his burden of proof on Issue 2 is guided by the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971). The *Primer* requires that applicants for new facilities must take a survey of the community problems, needs and interests in the area to be served, and further, that such a survey should be predicated upon an adequate description of the composition of the community so that the Commission can be assured that the community leaders and members of the general public interviewed constitute a representative range of persons living within the proposed service area. The representative range of groups are the kind of groups involved in the total makeup of the community. An applicant must, in addition, demonstrate that the group of interviewees is representative by cross-sectional surveys, statistically reliable samplings, and other valid methods. Furthermore, the applicant must show that the range in groups of leaders which he consulted is truly representative of the economic, social, political, cultural and other elements of the community.

5. Lopez-Lay determined the character of his proposed service area by obtaining information from the Census Bureau, Chamber of Commerce, government publications and personal contacts. The evidence in the record demonstrates that the method used by Lopez-Lay to determine the composition of the service area comports with the requirements of Question 9 of the *Primer*. Lopez-Lay thus has satisfied the obligation arising under issue 2 as to his application.

6. The proposed directional antenna radiation pattern assumes a cardioid or bean-shape with maximum radiation of 195 mv/m directed to the east. Like nulls with an effective field of less than 0.1 mv/m and an MEOV of 3.1 mv/m occur at 263.5 and 276.5 degrees true and there is a minor lobe with an effective field of 0.9 mv/m and an MEOV of 3.9 mv/m at 270 degrees true.

---

[5] This is predicated on the 1960 Census figures. The 1970 U.S. Census shows that nearly twice that number of persons would receive primary service.

7. There are no objects or structures in the vicinity of the proposed site which would cause serious problems of re-radiation. The direction of required protection falls over a narrow arc and is mostly over water. The measurement techniques proposed to be used by the applicant when conducting the proof-of-performance should provide meaningful data suitable for accurate analysis. Under the most adverse change in antenna current ratio and phase of ±0.5% and ±0.5°, respectively, the MEOV's would not be exceeded. A Potomac Instruments, Inc., model AM–19D antenna monitor[6] with a resolution of 0.1% in current ratio and 0.1° in phase would be installed. Antenna coupling equipment and lines will be selected for stability features. Applicant's consulting engineer is confident he can adjust and maintain the array as proposed.

8. In view of the foregoing, and upon consideration of all of the evidence of record, it is concluded that the applicant has met the issues directed at his application and that the public interest, convenience and necessity would be served by a grant of his application. However, in view of the low value of MEOV that must not be exceeded and the relatively small bounds within which phase and currents must be held, the grant is made subject to the following conditions:

An approved antenna monitor of sufficient accuracy and having a minimum resolution of 0.1° phase deviation and 0.1% sample current ratio deviation, shall be installed and continuously available to indicate the relative phase and magnitude of the sample current of each element in the array to insure maintenance of the radiated fields within the authorized maximum expected operating values of radiation (MEOV).[7]

Upon receipt of operating specifications and before issuance of a license, permittee shall submit the results of observations made daily of the base currents and their ratios, relative phases, sample current ratios, and sample current ratio deviations for each element of the array along with the transmitter operating parameters, the common point current, and the field intensities at each monitoring point for both non-directional and directional operations for a period of at least thirty days to demonstrate that the array can be maintained within the specified tolerances.[8]

Accordingly, **IT IS ORDERED** that unless an appeal to the Commission from this Initial Decision is taken by a party or the Commission reviews the Initial Decision on its own motion in accordance with the provisions of Section 1.276 of the Rules, the application of Carlos A. Lopez-Lay (BP–18486) for construction permit for a new standard broadcast station **IS GRANTED** subject to the above conditions.

ERNEST NASH,
Administrative Law Judge,
Federal Communications Commission.

---

[6] The Potomac Instruments, Inc., Model AM–19D Antenna Monitor does not provide phase and current ratio deviations and is, therefore, deemed inadequate. However, see conditions.

[7] These requirements would be met by Approved Potomac Instruments, Inc. Model AM–19 in conjunction with PMA–19 Precision Monitor Adapter.

[8] Applicant has indicated his willingness to accept these conditions.

F.C.C. 73-873

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notice of Apparent Liability to Mid New York Broadcasting Corp., Poland Spring, Maine

AUGUST 16, 1973.

MID NEW YORK BROADCASTING CORP.,
Licensee of Station WMTW-TV,
Congress Building,
Poland Spring, Maine 04274

GENTLEMEN: The Commission has on this date issued to you a Notice of Apparent Liability for forfeiture for violation of the Commission's logging Rules in connection with the broadcast of two programs by Station WMTW-TV, sponsored by National Chinchilla, Inc. The programs, according to the station's program logs were entitled "Chinchilla", and you indicate that these programs, approximately thirty (30) minutes in duration, were broadcast 24 times from March 25 through October 14, 1972. The Notice of Apparent Liability was confined to those apparent violations of Section 73.670 of the Commission's Rules which had occurred within a year of the Commission's issuance of the Notice to you on this day.

Programs concerning chinchilla ranching, most notably programs the Commission had determined are primarily designed to commercially promote those firms engaged in marketing chinchilla and chinchilla breeding systems, recently have come to the Commission's attention with increased frequency. On May 23, 1973, the Commission admonished Weigel Broadcasting Company for its broadcast of the "Chinchilla Ranching" program. *Weigel Broadcasting Co.*, FCC 73-565. On August 2, 1973, the Commission admonished Rush Broadcasting Corporation, licensee of WRBT-TV, for its broadcast of the identical program on seven occasions. *Rush Broadcasting Corp.*, FCC 73-844. Today, we have issued Notices of Apparent Liability for forfeiture to five licensees for apparent violations of Section 73.670 of the Commission's Rules incurred in connection with the broadcast of different programs concerning chinchilla ranching as well as issuing admonishments to six licensees, including yourself, for broadcasting what the Commission deems to be program-length commercials.[1] The common thread running throughout each of the chinchilla programs the Commission has thus far considered, although some of these programs are different, is the conclusive showing that each of these programs represents nothing more than a single continuous commercial promotion for the programs' sponsors and are therefore violative of our policies in the program-length commercial area.

---

[1] These licensees, in addition to yourself, are: United Television Co. of New Hampshire, licensee of station WMUR-TV, Channel 9, Manchester, New Hampshire; Turner Broadcasting of North Carolina, Inc. licensee of station WRET-TV, Channel 36, Charlotte, North Carolina; Midland Television Corporation, licensee of station KMTC-TV, Channel 27, Springfield, Missouri; and WXON-TV, Inc., licensee of station WXON-TV, Channel 20, Allen Park, Michigan. Additionally, the Commission this day is issuing a letter admonish-

The licensee's broadcast of the latest chinchilla ranching program was approved by the National Association of Broadcasters Television Code Authority, as were the chinchilla ranching programs considered in *Weigel* and *Rush, supra*, while programs broadcast during the earlier period was not so approved. As in those cases, the programs here contained elements that cause the same conclusion, namely that the entire program was designed, produced and presented to promote the products and services of the program's sponsor since the program so closely wove the purportedly non-commercial and commercial segments that the entire duration of the program broadcast must be considered a program-length commercial.

As mentioned above, the Notice of Apparent Liability issued to you this day is concerned with the apparent violations of the Commission's logging Rules, and although they attended the broadcasts of the programs questioned herein, the apparent violations asserted in the Notice were not premised upon the broadcast of the programs per se. The Commission believes, however, that the broadcast of any program-length commercial, i.e., any program that either weaves the non-commerical and commercial segments so closely, or any program that is entirely commercial because it is designed to promote a sponsor's products or services without regard to the public's interest in programming, is a serious concern, entirely aside from the apparent violations of the logging Rules which resulted from the broadcast of these programs.

It was this same concern that caused the Commission to issue the Public Notice, titled "Program-Length Commercials" (FCC 73-215), 39 FCC 2d 1062, 26 RR 2d 1023, sent to all our broadcast licensees on February 22, 1973. In that Public Notice, we stated:

> Program-length commercials raise three basic problems. Of primary concern is that such programs may exhibit a pattern of subordinating programming in the public interest to programming in the interest of salability. In addition, a program-length commercial is almost always inconsistent with the licensee's representations to the Commission as to the maximum amount of commercial matter that will be broadcast in a given clock hour. Finally, there are usually logging violations involved . . .

---

ing Channel Seventeen, Inc., licensee of Station KCBJ-TV, Channel 17, Columbia, Missouri, for apparently violating certain provisions of Section 73.670 of the Commission's Rules and for broadcasting two different chinchilla ranching programs which are program-length commercials. In all, the admonishments and the Notices of Apparent Liability considered in this proceeding involved four different chinchilla ranchng programs, to wit: two "National Chinchilla" programs, the programs broadcast by WMTW-TV here, tagged "NC 7012, Medium: 30:00 TV Program/Revision #9—Final/Approved by NAB 4/17/70," the same program considered in *Weigel* and *Rush, supra*, text, and "VTR-NC 6901-TV-30:00," a non-NAB approved script, both sponsored by National Chinchilla, Inc. and furnished through the Jackson Waterbury & Company and Sher & Jones, Inc. advertising agencies; "Royal American Chinchilla," tagged "30 Minute VTR RAC-0972-1," a non-NAB approved script, sponsored by Royal American Chinchilla, Inc., furnished through the Galvin, Farris, Ross, Inc. advertising agency; and "B & B Chinchilla," sponsored by B & B Chinchilla, Inc., a non-NAB approved script, furnished through the F. Thomas & Associates advertising agency, which included a 14-minute program and two 10-second promotional announcements.

We stated further:

> In the past, the broadcast of such programs has resulted in issuance of letters of admonition and/or relatively small forfeitures based on the logging violation aspect of the cases. However, the Commission continues to receive evidence that some stations still are broadcasting programs which, because of the interweaving of "entertainment" or "informational" content with promotion of the advertisers' products, are program-length commercials.
>
> This constitutes a reminder that the Commission considers the broadcast of such programs to involve a serious dereliction of duty on the part of the licensee, and a notice to all licensees that the Commission intends in the future to consider imposition of sanctions which it believes will be more effective in bringing about a discontinuance of the practice.

The Commission has found that the questioned program constitutes a program-length commercial since the entire broadcast appears to have been presented to promote the products and services of National Chinchilla, Inc., the program's sponsor, and that any entertainment or informational aspects the program may have contained were wholly incidental to the commercial promotions contained herein.

Although the broadcasts of the program-length chinchilla commercials ceased before the above Notice was issued, you had been put on notice by many Commission rulings of our policies with respect to this subject.[2] Nevertheless, it appears that by broadcasting the identical half-hour presentation 24 times during the above-referenced period, you exhibited a pattern of subordinating programming in the public interest to programming in the interest of salability, and that by broadcasting at least 29 minutes of commercial advertising in a single hour, each week, you disregarded the representation made in your last renewal application that you would normally present no more than 16 minutes of advertising per hour.

In view of the foregoing, you are requested within twenty days of the date of this letter to submit a statement as to your future policies and procedures regarding the broadcast of program-length commercials. Your response, along with all other information relating to your qualifications to remain a licensee, will be considered in connection with your next license renewal application.

Commissioners Johnson, Wiley and Hooks absent.

By Direction of the Commission,
Vincent J. Mullins, *Acting Secretary.*

---

[2] These Commission rulings include the following: *Topper Corporation*, 21 FCC 2d 148 (1969); *American Broadcasting Companies, Inc.*, 23 FCC 2d 132 (1970); *Columbus Broadcasting Company, Inc.*, 25 FCC 2d 56 (1970); *Multimedia, Inc.*, 25 FCC 2d 59 (1970); *KCOP–TV, Inc.*, 24 FCC 2d 149 (1970); *Dena Pictures, Inc.*, 31 FCC 2d 206 (1971); *National Broadcasting Company*, 29 FCC 2d 67 (1971); *WUAB, Inc.*, 37 FCC 2d 748 (1972); and *WFIL, Inc.*, 38 FCC 2d 411 (1972).

F.C.C. 73-850

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of
TWIN STATES BROADCASTING, INC. (ASSIGNOR)
AND
MIDWESTERN BROADCASTING COMPANY, INC. (ASSIGNEE)
For Assignment of License of WGLN (FM) (now WXEZ(FM)), Sylvania, Ohio
File No. BALH-1561

MEMORANDUM OPINION AND ORDER

(Adopted August 2, 1973; Released August 9, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING; COMMISSIONERS H. REX LEE AND REID ABSENT; COMMISSIONER WILEY ISSUING A SEPARATE STATEMENT IN WHICH CHAIRMAN BURCH JOINS; COMMISSIONER HOOKS CONCURRING IN PART AND DISSENTING IN PART.

1. The Commission has before it for consideration (i) the above-captioned application for assignment of the license of Radio Station WXEZ(FM) (formerly WGLN(FM)), Sylvania, Ohio, to Midwestern Broadcasting Company, (ii) the Citizens Committee to Keep Progressive Rock's petition for reconsideration (captioned a "Request for Stay, Reconsideration and Permanent Denial") of a grant of that application and related pleadings, (iii) the remand decision of the United States Court of Appeals in *Citizens Committee to Keep Progressive Rock* v. *FCC*, Case No. 72-1675, decided May 4, 1973, and (iv) the subsequent withdrawal of Citizens Committee's petition pursuant to an agreement between the Citizens Committee and assignee Midwestern.

BACKGROUND

2. On February 23, 1972, the Commission's Broadcast Bureau granted the subject application for the assignment of the WXEZ(FM) license to Midwestern. Thereafter, the Citizens Committee filed a petition for reconsideration of that grant, (a) objecting to assignee Midwestern's proposal to change the station's entertainment format from "progressive rock" to "middle of the road" music and (b) requesting that the Commission designate the application for an evidentiary hearing to determine if such a format change would serve the public interest. Upon the Commission's denial of that request and affirmance of the grant (35 FCC 2d 969 (1972)), the Citizens Committee ap-

pealed to the United States Court of Appeals for the District of Columbia Circuit.

3. By decision of May 4, 1973 (*Citizens Committee to Keep Progressive Rock* v. *FCC*, Case No. 72–1675), the Court reversed and remanded the case to the Commission for further proceedings. The Court's order was based, in part, on a disputed question of fact as to the availability to the Toledo, Ohio audience (Sylvania, the city of license, is a suburb of Toledo) of an adequate alternative source of progressive rock music. The Court noted, however, that counsel for the Commission had stated at oral argument that another Toledo area station (WIOT(FM)) had recently adopted a progressive rock format. Slip op. at n. 16. In view of its earlier observation that an adequate listening alternative is "undoubtedly the most important, and normally the conclusive element" (Slip op. at n. 6) where there are objections to a format change, the Court stated that the service of WIOT(FM) was "a matter for the Commission's consideration on remand." Slip op. at n. 16.

4. Subsequent to remand but prior to commencement of further Commission proceedings, the Citizens Committee and Midwestern negotiated an agreement which is based on an acknowledgment that WIOT(FM) does in fact provide the Toledo area listening audience with an adequate source of progressive rock music. Pursuant to that agreement the Committee, satisfied that WIOT(FM) currently fulfills the needs of Toledo area progressive rock listeners, withdrew its opposition to the assignment of the WXEZ(FM) license to Midwestern. Therefore, the Commission, on the basis of the program service provided by WIOT(FM), is prepared to reaffirm the Broadcast Bureau's grant of the assignment without hearing or further proceedings.[1]

5. But, we note that the Committee's objections were withdrawn in reliance on its agreement with Midwestern. By its terms the agreement requires Midwestern to undertake a program preference survey of the Toledo area population if, prior to the expiration date of the upcoming WXEZ(FM) license term (October 1, 1976) WIOT(FM) ceases to present an adequate source of progressive rock music. If, as a result of the survey, it finds that (a) twenty percent or more of that population expresses a desire for progressive rock which is not otherwise fulfilled by a Toledo area station and (b) a progressive rock format would be economically feasible, "Midwestern *shall* change the format of Station WXEZ–FM to provide such a progressive rock format." (Emphasis added.)

CONCLUSIONS

6. We have stated that the "principal ingredient" of a licensee's obligation to serve the public interest "consists of a diligent, positive and *continuing* effort by the licensee to discover and fulfill the tastes, needs and desires of his service area." *Programming Policy Statement*, 25 Fed. Reg. 7291, 7294 (1960). (Emphasis added.) Accordingly, each

---

[1] If no objection is raised to a format change the Commission may properly assume that the format is acceptable and, so long as all else is in order, it may grant the application." *Citizens Committee to Keep Progressive Rock*, slip op. at 16 (footnote omitted).

broadcaster has a continuing obligation to consider whether its choice of programming will serve the public interest. *National Broadcasting Co.* v. *United States*, 319 U.S. 190 (1943); see also *Yale Broadcasting Co.* v. *FCC*, Case No. 71–1780, decided January 5, 1973, rehearing denied, March 28, 1973. In this regard, it is contemplated that licensees will retain the flexibility necessary to respond to ever-changing audience tastes and preferences; to the extent that flexibility is diminished we believe responsiveness will be inhibited.[2]

7. Under the instant agreement, if during the next three years certain circumstances arise, all of which are beyond Midwestern's control, basic and fundamental station programming changes will take place. Midwestern will not have the opportunity, nor even the right, to exercise its own independent licensee judgment as to these programming matters; it will instead be irreversibly committed to programming which, at the time, it might not otherwise choose to present.[3]

8. We find that by this agreement Midwestern has improperly relinquished its flexibility to make programming decisions during the upcoming license term. Accordingly, its terms contravene the public interest and we therefore must disapprove it. As stated above, were it not for the agreement, we would, in view of the undisputed existence of an adequate progressive rock listening alternative, be prepared to reaffirm the Broadcast Bureau's grant of the assignment. Since the Committee's objections were withdrawn on the basis of that agreement, however, we will not take any action which would prejudice the Committee's right to resubmit those objections. Accordingly, action on the WXEZ(FM) assignment application will be deferred for at least thirty (30) days from the date of this order. If after thirty days (a) no objections to the format change have been filed and (b) our action disapproving the agreement has not been contested, we will expeditiously proceed to a decision in this case consistent with this order.

9. Accordingly, IT IS ORDERED THAT the agreement between the Citizens Committee to Keep Progressive Rock and Midwestern Broadcasting Company is hereby disapproved without prejudice to the Committee's resubmission of its objections to the format change within thirty (30) days from the date of this order.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

---

[2] See generally *Zenith Radio Corp.*, 40 FCC 2d 223 (1973), appeal pending *sub nom. Citizens Committee to Save WEFM, Inc.* v. *FCC*, Case No. 73–1057, United States Court of Appeals (D.C. Cir.). There the Commission recognized that in a multi-station market like Toledo, "when a station changes its format other stations in the area [often] adjust or change their formats in an effort to secure the listenership of the discontinued format." *Id.* at 231. This apparently explains WIOT(FM)'s decision to change its format to progressive rock.

[3] For instance, it may be that at the time of Midwestern's survey WXEZ(FM) could be fulfilling another unmet Toledo area programming need and that Midwestern, if given the opportunity to exercise its discretion, would not abandon its audience in order to change to progressive rock. Moreover, we note that WXEZ(FM) is the only station licensed to Sylvania, Ohio, and that its primary obligation is to serve Sylvania. While progressive rock music may have an audience in the Toledo area, it does not follow that such programming will always be attuned to the tastes of Sylvania listeners. Cf., *Robert P. Adams,* 38 FCC 2d 1 (1972).

SEPARATE STATEMENT OF COMMISSIONER RICHARD E. WILEY IN RE APPLICATION OF TWIN STATES BROADCASTING, INC. (WXEZ-FM), BALH-1561 AND APPLICATION OF HEFTEL BROADCASTING-BOSTON, INC. (WROR-FM), BALH-1740 AND BASCA-528 IN WHICH CHAIRMAN BURCH JOINS

I support completely the view that licensees and community groups should be encouraged to engage in dialogue and enter into negotiated agreements designed to improve broadcast service. Nevertheless, I am disturbed by the willingness of some licensees, in an apparent attempt to avoid the Commission's processes, to abrogate their obligations as public trustees and turn over to third parties responsibilities which are uniquely their own. In my opinion, the public is ill served if those who are licensed to serve their communities and held accountable for their stewardship relinquish, for purely private reasons, the obligation to make independent judgments that affect the public interest. I recognize that it is inherent in the process of negotiation that any accord attained between the parties may reflect their individual, private objectives. Nevertheless, the broadcast community at large, consisting of myriad diverse points of view, retains its own interest in such agreements and my abiding responsibility—as I see it—is to insure that the public interest not be sacrificed for personal gain. I am sufficiently concerned by these few instances, isolated though they may be, to note my individual intention not to countenance agreements that may result in an abandonment of public obligations to private interests.

F.C.C. 73-1001

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PARTS 89, 91 AND 93 OF THE COMMISSION'S RULES AND REGULATIONS TO PERMIT THE USE OF VEHICULAR RADIO UNITS TO ACT AS MOBILE REPEATER STATIONS	Docket 19721 RM-1799, 1998

REPORT AND ORDER

(Adopted September 26, 1973; Released October 2, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. On April 16, 1973, the Commission issued a Notice of Inquiry and Notice of Proposed Rule Making in the above-entitled matter which was published in the Federal Register on April 20, 1973 (38 FR 76). It was proposed to amend Sections 89.12, 89.307, 89.357 and 91.7 of the rules to permit the use of vehicular radio units as mobile repeater stations to relay communications from hand-carried transceivers to associated base stations in the Forestry Conservation and Power Radio Services. The Notice of Inquiry stated that the Commission wished to take comprehensive action in this matter and asked for additional comments as to whether the other land mobile services governed by Parts 89, 91, and 93 of the Commission's Rules should be granted this capability. Comments were also requested on whether the mobile repeated function should be limited to licensees assigned more than a single frequency so that it would not be necessary to assign an additional frequency solely for this usage.

2. The Commission proposed this mobile repeater capability to augment the low power of hand-held transceivers which often does not permit direct talk-back capability to base stations. This has been shown to be an effective function in services which are already authorized this capability—the Police and Fire Radio Services, and also in the Business Radio Service for those frequencies in the 460–470 MHz band set aside for use by the central station protection industry. These operations were permitted in order to overcome shielding effects of buildings and other obstacles and they enable operators of low-powered hand-carried transceivers immediately to transmit important messages to their headquarters without interruption of the communication flow.

3. Comments were received from the National Association of Business and Educational Radio, Inc. (NABER), the American Association of State Highway Officials (AASHO), Sub-Committee on Communications and Electronic Applications; the Central Committee on Communications Facilities of the American Petroleum Institute (API); the American Telephone and Telegraph Company (AT&T);

the Special Industrial Radio Service Association, Inc. (SIRSA); the Utilities Telecommunications Council (UTC); Forestry Conservation Communications Association (FCCA); the California State Communications Division; Forest Industries Telecommunications (FIT); M & R Timber, Inc.; and the Detroit News. No reply comments were filed. All comments submitted have been carefully considered, as will be discussed herein.

4. The basic objective of the proposed rule amendment—to extend mobile repeater capability to the Forestry Conservation and Power Radio Services—was unanimously supported by the comments. The view of Forest Industries Telecommunications was typical:

> In some services, this relay capability is vital to the activities performed while away from the mobile unit. The speed with which an emergency message can be relayed for the purpose of securing immediate help in time of need is most vital. Therefore, those services that have such urgent requirements should have this capability available to them.

Similarly, the comments supported extending the rule change to permit vehicular units to function as mobile repeater stations in all land mobile services. Here, the consensus is that allowing this capability will contribute to greater efficiency of operation.

5. The Commission believes, as noted throughout the comments and from our observation of the practical application of the mobile repeater technique in services where it is already authorized, that the rules should be amended essentially as proposed. Thus, we have determined that it will promote the public interest to adopt rules for mobile repeater capability in land mobile services governed by Parts 89, 91, and 93.

6. We have considered, too, the issue concerning whether a licensee should be assigned a separate frequency for mobile repeater operations. While there were no objections to the general proposition of expanded mobile repeater station capability in the Industrial and Land Transportation Radio Services, SIRSA, API and AT&T suggest limiting eligibility to those licensees who are assigned more than a single frequency. As the Central Committee of the API stated:

> In view of the heavy frequency congestion on many frequencies allocated to the Special Industrial and Business Radio Services, however, it is not believed that vehicular repeaters should be authorized on frequencies below 450 MHz.

NABER, UTC, and FIT, on the other hand, request that this capability be made available to all who demonstrate a need for it.

7. After weighing the arguments, the Commission has decided to permit this capability in all services covered by Parts 89, 91, and 93 which comprise the Public Safety, Industrial and Land Transportation Radio Services, even in those situations where the licensee is normally authorized a single frequency. However, it appears that the frequency congestion problem which exists in the Special Industrial and Business Radio Service below 450 MHz requires a special provision. In these services the Commission will only make the frequencies allocated for low power (3 watts) operations available to users assigned frequencies below 450 MHz. These frequencies have been selected because they are allocated for low power operations and because they may be used extensively in the same general geographic

area. With reference to the other radio services the Commission would point out that these rule changes do not provide any protection for the low power portable transceivers from interference caused by other equipment which may operate on the same frequency. We, therefore, urge persons who feel they require this capability to seek authorization on low-power frequencies, where available. We further urge licensees authorized more than one frequency, to use the frequencies already authorized rather than seek additional frequencies to obtain this talk-back capability.

8. In view of the foregoing, the Commission concludes that the public interest will be served by amending the rules to permit vehicular units, authorized under Parts 89, 91, and 93 to be used as repeater stations.

9. Accordingly, IT IS ORDERED, pursuant to the authority contained in Section 4(i) and 303 of the Communications Act of 1934, as amended, that Parts 89, 91, and 93 of the Commission's Rules are amended effective November 9, 1973, as set forth in the attached Appendix.

10. IT IS FURTHER ORDERED, That the proceedings in Docket 19721 are hereby TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

APPENDIX

Parts 89, 91, and 93 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

A. Part 89—Public Safety Radio Services.

1. Section 89.3(b) is amended by adding a new definition in alphabetical order to read as follows:

§ 89.3 Definitions.

* * * * * * *

(b) * * *

Mobile repeater station. A mobile station in the mobile services authorized to retransmit automatically on a mobile service frequency, communications originated by hand-carried mobile units or by other mobile or base stations directed to such hand-carried units.

* * * * * * *

2. Section 89.12 is amended by adding new paragraph (e) to read:

§ 89.12 Relay, repeater, and control stations.

* * * * * * *

(e) *Mobile repeater stations.* Mobile stations utilizing mobile service frequencies above 25 MHz may be used for the purpose of providing extended talk-back range for low-power hand-carried transmitters.

(1) Hand-carried transmitters whose communications will be automatically relayed by mobile stations may be assigned a separate frequency for this use but limited to a maximum output power of 2.5 watts.

(2) Each mobile station, when used for the purpose of automatically retransmitting messages originated by or destined for hand-carried units, shall be so designed and installed that it will be activated only by means of a continuous coded tone, the absence of which will de-activate the mobile transmitter. The continuous coded tone is not required when the mobile station is equipped with a switch that must be activated to change the mobile unit to the automatic mode and an automatic time delay device to de-activate the transmitter after any uninterrupted period of transmission in excess of three minutes.

(3) Mobile stations may also be used to provide extended base station talk out range to pocket or miniature receivers. However, any additional frequencies required for this purpose may not be used with a power output in excess of 2.5 watts.

§ 89.307 [Amended]

3. Section 89.307 is amended by deleting paragraph (f).

§ 89.357 [Amended]

4. Section 89.357 is amended by deleting paragraph (e).

B. Part 91—Industrial Radio Services.

1. Section 91.3 is amended by adding a new definition in alphabetical order to read:

§ 91.3 Definitions.

* * * * * * *

Mobile repeater station. A mobile station in the mobile service, authorized to retransmit automatically on a mobile service frequency, communications originated by hand-carried mobile units or by other mobile or base stations directed to such hand-carried units.

* * * * * * *

2. Section 91.7 is amended by adding new paragraph (e) to read:

§ 91.7 Relay and control stations.

* * * * * * *

(e) *Mobile repeater station.* Mobile stations utilizing mobile service frequencies above 25 MHz may be used for the purpose of providing extended talk-back range for low-powered hand-carried transmitters.

(1) Except as provided in subparagraph (4) of this paragraph, hand-carried transmitters whose communications will be automatically relayed by mobile stations may be assigned a separate frequency for this use but limited to a maximum output power of 2.5 watts.

(2) Each mobile station, used for the purpose of automatically retransmitting messages originated by or destined for hand-carried units, shall be so designed and installed that it will be activated only by means of a continuous coded tone, the absence of which will de-activate the mobile transmitter. The continuous coded tone is not required when the mobile station is equipped with a switch that must be activated to change the mobile unit to the automatic mode and an automatic time delay device to de-activate the transmitter after any uninterrupted period of transmission in excess of three minutes.

(3) Except as provided in subparagraph (4) of this paragraph, mobile stations may also be used to provide extended base station talk out range to pocket or miniature receivers, however, any additional frequencies required for this purpose but limited to a maximum power output of 2.5 watts.

(4) Notwithstanding subparagraphs (1) and (3) of this paragraph, in the Business and Special Industrial Radio Services in the frequency bands below 450 MHz only low power frequencies (3 watts or less plate input power) may be assigned for the purposes described in subparagraphs (1) and (2) of this paragraph.

3. In § 91.554(b), limitations (32) and (41) are amended to read:

§ 91.554 Frequencies available.

* * * * * * *

(b) * * *

(32) Within the boundaries of urbanized areas of 200,000 or more population defined in the U.S. Census of Population, 1960, Vol. 1, Table 23, pages 1–50, this frequency may be assigned only to persons rendering a central station commercial protection service. *Central station commercial protection service* is defined as electrical protection and supervisory services rendered from and by a central station approved by one or more of the recognized rating agencies and/or the Underwriters' Laboratories, Inc. (UL).

* * * * * * *

(41) This frequency may be assigned only to persons rendering a central station commercial protection service. *Central station commercial protection service* is defined as those electrical protection and supervisory services rendered from and by a central station approved by one or more of the recognized rating agencies and/or the Underwriters' Laboratories, Inc. (UL).

* * * * * * *

C. Part 93—Land Transportation Radio Services.

1. Section 93.7 is amended by adding a new definition in alphabetical order to read as follows:

§ 93.7 Definitions.

* * * * * * *

Mobile repeater station. A mobile station in the mobile services authorized to retransmit automatically on a mobile service frequency, communications originated by hand-carried mobile units or by other mobile or base stations directed to such hand-carried units.

* * * * * * *

2. New § 93.10 is added to read as follows:

§ 93.10 Mobile repeater stations.

(a) Except as provided in § 93.355 of the Railroad Radio Services Rules, mobile stations utilizing mobile frequencies above 25 MHz may be used for the purpose of providing extended talk-back range for low-powered hand-carried transmitters.

(1) Hand-carried transmitters whose communications will be automatically relayed by mobile stations may be assigned a separate frequency for this use but limited to a maximum output power of 2.5 watts.

(2) Each mobile station, when used for the purpose of automatically retransmitting messages originated by or destined for hand-carried units, shall be so designed and installed that it will be activated only by means of a continuous coded tone, the absence of which will de-activate the mobile transmitter. The continuous coded tone is not required when the mobile station is equipped with a switch that must be activated to change the mobile unit to the automatic mode and an automatic time delay device to de-activate the transmitter after any uninterrupted period of transmission in excess of three minutes.

(3) Mobile stations may also be used to provide extended base station talk out range to pocket or miniature receivers, however, any additional frequencies required for this purpose may not be used with power in excess of 2.5 watts.

F.C.C. 73D-43

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of CHARLES R. INGRAM AND ROBERT R. TOON, D.B.A. NEO BROADCASTING CO., WAGONER, OKLA. For Construction Permit	Docket No. 19713 File No. BP-19253

Appearances

Richard R. Zaragoza, Esq., on behalf of Charles R. Ingram and Robert R. Toon, d/b as NEO Broadcasting Co.; and *David G. Richards, Esq.*, on behalf of the Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JOHN H. CONLIN

Issued August 10, 1973; Effective October 3, 1973 pursuant to Section 1.276 of the Commission's Rules

Preliminary Statement

1. This proceeding was designated for hearing by an order released on March 27, 1973. At the time, the case involved the mutually exclusive applications of Charles R. Ingram and Robert R. Toon, d/b as NEO Broadcasting Co. (NEO) and William Haydon Payne (Payne), each seeking a construction permit for a standard broadcast station in Wagoner, Oklahoma. By agreement of the parties the Payne application was dismissed in accordance with the provisions of Section 1.525 of the Rules (FCC 73M-581). As a result the only factual issue remaining in the case is the following:

> To determine the anticipated time segment, duration and frequency of programs proposed by [NEO] to meet community needs.

2. The basis for this issue is found in the following language from the order of designation:

> In the present instance, [NEO appears] to have consulted with a number of individuals from which consultations the [applicant appears] to have become aware of area problems. However, [its] statements . . . on the manner in which [it] propose[s] to contribute toward the solution of the problems that have been ascertained are too general to provide a clear indication of the description, anticipated time segments, duration and frequency. Accordingly, an issue will be specified to permit [NEO] is clarify this aspect of [its] . . . statements of program service ((FCC 73-328), para. 3).

3. A prehearing conference was held on May 24, 1973 and the hearing took place on June 27, 1973. NEO filed proposed findings on July 12, 1973, and on August 6, 1973 the Broadcast Bureau stated informally that it would file no responsive findings.

FINDINGS OF FACT

4. In its application for construction permit (NEO FCC Form 301, Exhibit #2-P, page 1, 6-12-72),[1] NEO stated that the following problem areas were shown by its survey of community needs and interests: "(1) More Jobs and New Industry; (2) Recreation Facilities; (3) Expand School System; (4) Repair City Streets; (5) Upgrade City Utilities; (6) More Doctors and Medical Facilities; (7) Movie Theater; (8) Improved Communication Facilities; (9) Lack of Civic Pride; and (10) Need to Clean Up City." The purpose of the hearing was to determine more precisely how the applicant's proposed programming would respond to these community concerns.

5. By sworn affidavit, Charles R. Ingram, a partner in NEO, submitted the following list and description of typical public affairs programs which would be broadcast during the license period (see *NEO Broadcasting Co. Hearing Exhibit No. 1* ("Exhibit No. 1")):

> ***Sunday Forum***
>
> Scheduled to be broadcast every Sunday morning between the hours of 8:30 and 10.00 a.m. for ninety minutes. While this will be primarily a call-in program whereby the listener is encouraged to call in and express his opinion to the moderator for discussion, there will be a regular presentation, i.e., at least once every two weeks, of community leaders who will discuss with the moderator and callers-in one or more of the community needs and interests set forth in the [application]. The general public will be encouraged to call in and argue with or take issue with the suggested solutions, priorities, etc., of the needs discussed and to set forth their own views on such subjects. Specifically, ways to fulfill the need for more jobs and industry will be aired and discussed, as will the means for providing more and better recreational facilities, including movie theaters. The expansion of the school system, the need for street repairs, the upgrading of city-owned utilities to provide fuller water and electricity service, the need to attract more doctors and medical facilities, the need to increase civic pride, and the cleaning up of the city will be specific problems which will be treated on ***Sunday Forum.***
>
> ***Industrial Features***
>
> Scheduled to be broadcast four times per day, two in the morning and two in the afternoon, for two minutes each, this program will be directed specifically to dealing with the following needs: more jobs and industry; lack of civic pride; and city clean-up. The program will seek to inform the public as to how they as individuals and their local government can bring more business to Wagoner. In order to achieve maximum effectiveness, the two minute program will be rotated in the following manner, e.g., Monday—7:15 and 10:45 a.m., and 1:45 and 5:45 p.m.; Tuesday—7:45 and 11:15 a.m., and 2:15 and 6:15 p.m., etc. Ten to twelve programs will be produced at the outset. Others will be produced to insure freshness of the message on the issues mentioned above, and on newly discovered ones.
>
> ***Bulletin Board***
>
> Scheduled to be broadcast twice each day, once in the morning (9:20 a.m.) (except Sunday mornings), and once in the afternoon (2:20 p.m.), for five minutes each. This program, comprised of comments regarding community happenings and the like, will treat the need for improved people-to-people communications, etc.
>
> ***Station Editorials***
>
> Station editorials will be aired on a regular basis, i.e., every other Monday in the morning (7:30 a.m.) and afternoon (5:30 p.m.) hours for two minutes

---

[1] NEO's unopposed request that official notice be taken of this portion of its application is hereby granted.

each, to trigger meaningful discussion on the specific needs enumerated above and/or new ones as they arise, and to increase civic pride and get the job done. Contrary views will be solicited and aired. The every other Monday schedule is a minimum. To the extent that the applicant discovers there is a need for more editorialization, depending on its effectiveness as compared with the effectiveness of other problem solving formats, the applicant will increase editorialization generally, repeat specific editorials, etc.

6. As a general matter, these proposals will be augmented by special interview programs and features. Public service spots and news stories will also be utilized in dealing with the various needs of the community (Exhibit No. 1).

CONCLUSIONS

7. The findings have been set forth at some length because, although the case is no longer contested, the issue is apparently a novel one,[2] and some uncertainty existed at the beginning of the proceeding as to the evidentiary showing that might be required. It seems apparent, however, that the issue was intended to establish whether an effective linkage exists between the problems identified through the survey and the broadcast matter that has been designed to deal with them. See *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 F.C.C. 2d 650, 675–76 (1971).

8. NEO's showing is ample in this regard. Ten community needs or problems were identified. Each is to be dealt with specifically on one or more of the programs proposed. Considering the proposed programs in terms of the time or times of the day when they are to be aired ("anticipated time segments"), the programs are readily available to a significant segment of the listening audience. For example, *Industrial Features* will be broadcast during the morning and afternoon "drive times," as well as during mid-morning and mid-afternoon. The programs are also broadcast frequently enough so that information will be available to a broad cross section of listeners throughout the day. *Industrial Features* and *Bulletin Board* will be heard every day. *Sunday Forum* will present an extended discussion of community problems each Sunday and editorials will be aired on a biweekly basis.

9. Given the formats of the various programs proposed, each is sufficient in duration to provide substantive information on the particular problems to be dealt with. For example, the 90-minute *Sunday Forum* allows for a detailed, extensive discussion of the pros and cons of various solutions to the specific problems discussed. The format provides for both public access and appearances by spokesmen designated by the station. The *Station Editorial*, because of its format and two-minute duration, will tend to focus on one viewpoint in a given broadcast with opposing viewpoints being presented at a later time, thus insuring a balanced discussion of the problems.

10. In light of the foregoing, it is concluded that the evidence submitted by NEO under the designated issue establishes that, in terms of the anticipated time segments, duration, and frequency of

---

[2] See Tr. 18.

the broadcasts it has planned, the proposal comports with Commission requirements. See *Primer on Ascertainment of Community Problems, supra.* Since NEO has already been found qualified in other respects, its application will be granted.

Accordingly, IT IS ORDERED, that, unless an appeal from this Initial Decision is taken by a party or the Commission reviews the Initial Decision on its own motion, in accordance with the provisions of Section 1.276 of the Rules, the application of Charles R. Ingram and Robert R. Toon, d/b as NEO Broadcasting Co. IS GRANTED.

John H. Conlin,
Administrative Law Judge,
Federal Communications Commission.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Petition by
JOHN CERVASE, NEWARK, N.J.
For Reconsideration of Personal Attack
Ruling Re Station WNET-TV

SEPTEMBER 26, 1973.

JOHN CERVASE, Esq.
423 Ridge Street
Newark, N.J. 07104

DEAR MR. CERVASE: This is in reponse to your petition of September 1, 1973, requesting the Broadcast Bureau to reconsider its action of August 24, 1973, on your complaint that WNET-TV had broadcast a *Black Journal* program containing a personal attack upon you, namely, a statement by one person appearing on the program, that you were a "political opportunist," and that the licensee had declined to afford you a reasonable opportunity to respond, as required by Section 73.679(a)(3) of the Commission's Rules and Regulations. In its August 24, 1973 determination, the Broadcast Bureau was unable to conclude that the licensee was unreasonable in its judgment that the "political opportunist" remark did not constitute a personal attack.

In your petition of September 1, 1973, you state that "[Tony] Brown's implication that I am a 'racist' is a personal attack" and refer to your original complaint and reply to the licensee's response, in which you stated that "the entire program was an editorial that I (as an opponent of black students) am a racist." In effect, you suggest that, within the context of the *Black Journal* program, a statement by a black official that a white attorney was a "political opportunist" was tantamount to calling you a "racist." The Broadcast Bureau has examined, thoroughly, the transcript of the *Black Journal* program in question, and other documents associated with your complaint.

In the program, the word "racist" occurs in two contexts. At one point, an otherwise unidentified demonstrator refers to the licensee as "nothing but a bunch of Communist racists," and suggests that film taken of the demonstration will be used to brand the demonstrators as "racists." At another point in the program, a parent states that the controversy surrounding LeRoi Jones had "now become a racist issue with no facts involved." Another person interviewed stated that voting by the City Council on major issues was done on racial lines. Although the broadcast includes an interview with Adimu Chunga, of the Board of Education, the transcript reveals no statement that the Board of Education, or any of its members, are motivated by racism in deciding issues presented to it, nor does the transcript state at any point that you, while a member of the Board of Education, had allowed your decisions to be influenced by any alleged racial motivation.

It appears that the thrust of the *Black Journal* program in question dealt, not with the decisions of any single, identified public figure, except possibly Mayor Gibson, but rather with the more generalized topic of racial polarization. The statement which you contend constituted a personal attack upon you may be considered, reasonably, not as a characterization that you are a "racist," but rather as a statement ascribing to your actions a political motivation, and as stated above, we do not believe the licensee was unreasonable in concluding that this reference was not a personal attack.

As we stated in our letter of August 24, 1973, the Commission does not substitute its judgment for that of the licensee, but rather determines only whether or not the decision of the licensee was a reasonable judgment made in good faith. You have offered no new evidence or argument in your petition for reconsideration in support of your contention that the licensee acted unreasonably, or in bad faith.

Accordingly, your petition for reconsideration by the Broadcast Bureau is denied.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

William B. Ray,
Chief, Complaints and Compliance Division,
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
THOMAS O'BRIEN
Concerning Personal Attack by Southern
California Broadcasting Co. (KIEV),
Glendale, Calif.

SEPTEMBER 24, 1973.

Certified mail—Return Receipt Requested

SOUTHERN CALIFORNIA BROADCASTING CO.,
Radio Station KIEV,
106 North Glendale Avenue,
Glendale, Calif. 91206

GENTLEMEN: This is with reference to the December 6, 1972 complaint against your station filed by Mr. Thomas O'Brien.[1] Mr. O'Brien alleged that the "Voice of Americanism" program, broadcast daily by KIEV, aired the tape of a speech by Mr. Colonel Donner, a "Voice of Americanism" employee, entitled the "Liberal Professors and the Effect They Have on Their Students," which personally attacked two California State University professors, accusing them of "treason." More specifically, complainant stated that the Donner speech was broken up into three parts and broadcast on September 6, 7 and 8, 1972; and that on September 6, Mr. Donner made the following opening statement:

> I charge the college professors of this country, the majority of those who are social scientists, with *treason.*

Complainant further states that Mr. Donner then proceeded with his reasoning to substantiate this claim; that in the September 7 and 8 portions of this speech, Mr. Donner specifically mentioned Dr. Julian Foster and Dr. "Phil" Silvers, both professors at California State at Fullerton, as exemplifying the professors referred to in his opening comments, and related stories of their "liberal" classroom conduct to substantiate his charge of treason. Mr. O'Brien contends that the reference to the professors constituted personal attacks upon their honesty, character, integrity or like personal qualities, and that KIEV thereby violated Section 73.123(a) of the Commission's Rules and Regulations by failing to comply with the provisions thereof.[2]

---

[1] The following pleadings were received:
(1) Complaint received December 11, 1972.
(2) Response from KIEV received February 23, 1973.
(3) Reply to response received March 5, 1973.

[2] Section 73.123(a) states:

(a) When, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time and in no event later than one week after the attack, transmit to the person or group attacked (1) notification of the date, time and identification of the broadcast; (2) a script or tape (or an accurate summary if a script or tape is not available) of the attack; and (3) an offer of a reasonable opportunity to respond over the licensee's facilities.

Mr. O'Brien also alleged that Mr. Donner attacked Senators George McGovern and Hubert Humphrey as supporting "liberal" political idealogies. He stated that the "principal" theme weaved throughout the program of the "Voice of Americanism" is to use "euphemisms of liberal, leftist . . . socialist . . . etc." to refer to Communist sympathizers and that therefore these references should also be considered personal attacks.

You responded to a Commission inquiry on February 20, 1973 and submitted tapes of the Donner speech. You stated that the "theme of Mr. Donner's address was that 'liberal' professors on college campuses, particularly in the California area are influencing their students to adopt similar 'liberal' views on special issues, and that the diffusion of such political views is harmful to this nation"; that professors holding extreme political views on the campuses of California State Universities have been the subject of controversy, although you do not believe that the "Voice of Americanism" programs cited by Mr. O'Brien have contained attacks upon the honesty, character, integrity or like personal qualities of the persons referred to therein. With respect to the comments concerning Senators Humphrey and McGovern, you stated that these references were made in the form of rhetorical questions and in any event, membership in socialist political parties is nowhere proscribed.

First, it does not appear that the references to Senators Humphrey and McGovern as "liberals and socialists" would constitute attacks upon their honesty, character or integrity. Comments of this nature refer to political ideological beliefs and do not constitute character denunciation. The Commission has stated that the personal attack rule requires opportunity for a response only when character is maligned and not when what is involved is merely disagreement, no matter how sharply expressed. *Port of New York Authority*, 25 FCC 2d 417 (1970).

With respect to Mr. O'Brien's allegation that Mr. Donner personally attacked Professors "Phil" Silvers and Julian Foster, it would appear that Mr. Donner's speech was the discussion of a controversial issue of public importance. As stated by you, the theme of the speech was the influence of "liberal professors on college campuses" and the harm that their views do to the country.

It appears that the Donner speech was divided into three parts and broadcast on three consecutive days; that the charge of "treason" was made on September 6; and that the references to professors Silvers and Foster were made on the September 7 and 8 portions of the speech. A review of the September 6 portion of the program reveals that Mr. Donner said:

> We are going to make a very severe charge . . . that this country is headed on the direct road to self destruction and will reach the end of that road very shortly . . . and it is the college professors who are bringing us to that point . . . I charge, ladies and gentlemen, the college professors of this country, the majority of those who are social scientists, with treason.

He continued, stating:

> Our professors are ruining this country and now we are going to spend *the rest of our time proving that very, very serious charge.* [Emphasis Added].

The second portion of the speech, broadcast on September 7, reveals that Mr. Donner was pointing out the "day after day" classroom dialogue of the professors and how they "neutralize" the students, made specific reference to Dr. Julian Foster, and stated the following:

> Dr. Julian Foster . . . was comparing the right wing with the left wing in class and here is the approach we got. "The left is for freedom, the right is against freedom." He justified that by saying "the right was more authoritarian because the right was always for law enforcement." Obviously law enforcement means your freedoms are abridged, right?—ok—he goes on and on. "The left is more humanitarian"; but then here is where he got to the crux of the matter, ladies and gentlemen . . . and I'm not kidding; this happened in a state college in Fullerton, in Orange County right by John Schmitz, where John Schmitz is our Congressman, OK. This isn't Havana University or Moscow University; it's right down 30 miles south. He says "the left is more logical, the right is more illogical . . ." Now I thought that is an interesting statement, and I was allowed one question in class without being penalized gradewise and so I asked him, "Professor, tell me why is the left more logical?" He said, Mr. Donner, it should be perfectly obvious. On the left we have many more atheists and agnostics and on the right we have many more Christian-oriented people. Since Christianity is obviously a form of mysticism it is therefore an illogical mental process . . ." Now, ladies and gentlemen, those questions were on my final exam—you see—we had to check off—and—I wanted my A in that class so I checked yes, the left is more logical, but you see I knew that was a lie—but to the majority of my peers that was the truth—of course—because do you send your kids to college and say "go and ignore the professor"? Of course not. What do you do? You say, "Go and listen and learn," and that's exactly what they are doing and you can see what they are listening to and what they are learning . . . Now once again, I think we have had enough examples of this to show you how the student is neutralized day after day, what's wrong with America . . . Why do the professors do this—why do they continually show what's wrong with the country—because they believe they have a moral obligation to do so.

In the third portion of the speech, broadcast September 8, Mr. Donner indicated that he was examining how professors "get to" students and stated the following:

> A girl, Vice President of Campus Crusade for Christ . . . in six weeks she was a member of SDS . . . I (Donner) looked into what had happened to her and she had taken a philosophy class from Dr. Phil Silvers . . .

He then states the following of Dr. Silvers:

> Incidentally they have a law . . . remember what I said about bureaucrats . . . how a law can be passed and the bureaucrats can sabotage it; case in point . . . the state law says that if you are going to teach in a state school that you must sign a loyalty oath . . . Dr. Phil Silvers never signed a loyalty oath, he refused to sign it, but they let him teach anyway . . . so he taught Philosophy 6A . . . and he starts off the class by stating . . . We are only going to study one philosopher, the only philosopher . . . and that happens to be Karl Marx . . . and if you don't like that students [you can] hit the door!

From the foregoing, it appears that Mr. Donner, in the first part of the speech, charged "the college professors of this country" with "treason," and stated that the rest of his speech would be devoted to "proving that very, very serious charge"; that part of his "proof" consisted of the above-quoted second and third portions of his speech; and that these portions specifically identified Professors Foster and Silvers as examples of professors whom he has charged with "treason." Under these circumstances, it is apparent that the charge of treason was made against specifically named individuals during the discussion of a controversial issue of public importance. This is so even though the charge of treason and the naming of the professors took place in three different portions of the speech, since the three portions are so closely related as to constitute a continuing discussion of the same issue.

Therefore, you incurred obligations under the personal attack rules to notify these individuals, provide a script, tape, or summary of the attack, and afford them a reasonable opportunity to respond. The rules are explicit in this area and the Commission has repeatedly stated that:

> The notification requirement is of utmost importance, since our experience indicates that otherwise the person or group attacked may be unaware of the attack, and thus the public may not have a meaningful opportunity to hear the other side. *Personal Attacks; Political Editorializing;* 8 FCC 2d 721, 725 (1967).

It would appear, therefore, that you violated Section 73.123(a) of the Commission's Rules by failing within one week of the attack to notify Professor Silvers and Professor Foster of the attacks, furnish them with a script, tape or summary of the attack, and offer them a reasonable opportunity to respond.

You are therefore requested to inform the Commission within 20 days of the date of this letter of your future policy concerning the handling of personal attacks and your obligations under the personal attack rules. This letter is being placed in the appropriate Commission file where it will be available for reference in connection with your overall performance as a licensee.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

William B. Ray,
Chief, Complaints and Compliance Division,
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
POLISH-AMERICAN CONGRESS, INC.,
CHICAGO, ILL.
Concerning Alleged Personal Attack by
American Broadcasting Co.

SEPTEMBER 26, 1973.

THADDEUS L. KOWALSKI, Esq.,
Polish-American Congress, Inc.,
1200 North Ashland Avenue,
Chicago, Ill. 60622

DEAR MR. KOWALSKI: This is in response to your June 28, 1973 complaint against television programs broadcast by ABC.

You allege that ABC violated the Commission's personal attack rule during the August 10, 1972 broadcast of the Dick Cavett Show by attacking "the character, intelligence, hygiene or appearance of members of the Polish American community." You state that the controversial issue of public importance involved was the "demeaning and defamatory attacks in the guise of ethnic 'humor'." Additionally, you contend that ABC failed to notify you of the alleged attack or to provide a copy of the script within seven days, or to offer you a reasonable opportunity to respond, pursuant to the Commission's personal attack rule. You state that a so-called "apology" made by Steve Allen on the Dick Cavett Show of August 11, 1972 was actually "the basis for more demeaning humor."

You also claim that ABC has violated the fairness doctrine by failing to present in its overall programming "opposing views on the issue of defamation of Polish Americans." You state that "the 'Polack jokes' on the Dick Cavett Show, hosted by Steve Allen, on August 10 and 11, 1972 constitute a controversial issue of public importance because such jokes in and of themselves belittle a large segment of the population." Specifically, you contend that the jokes disseminate the "dumb polack image, i.e., lack of intelligence, lack of personal hygiene, comic apparel and obnoxious features." Further, you state that humor is an "important propaganda tool" and does not lessen the public importance of the issue, and you cite a resolution introduced in Congress, calling for the cessation of "television programs that defame, stereotype, ridicule, demean or degrade any ethnic or religious group."

In its October 31, 1972 letter to you, ABC denied that any "harm or malice toward Polish-Americans was intended." ABC stated that Steve Allen apologized for any offense the following night, August 11, 1972, and it declined your "equal time" request.

The selection and presentation of specific program material are responsibilities of the station licensee, and under the provisions of Section 326 of the Communications Act the Commission is specifically prohibited from censoring broadcast material. However, if a station presents one side of a controversial issue of public importance, it is required to afford reasonable opportunity for the presentation of contrasting views. This policy, known as the fairness doctrine, requires a broadcast licensee to encourage and implement the broadcast of contrasting views in its overall programming which, of course, includes statements or actions reported on news programs. Thus, both sides need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure rather than the right of any individual to broadcast his views. It is the responsibility of the broadcast licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue. The Commission will review complaints to determine whether the licensee can be said to have acted reasonably and in good faith.

In support of your contention that the broadcast of Polish jokes constitutes a controversial issue of public importance, you state that the jokes "belittle a large segment of the population" by perpetuating a "dumb Polack image." However, you have not shown that there is any controversy in this country concerning the intelligence or other qualities of Polish Americans.[1] Accordingly, we are unable to find from the evidence presently before us that ABC was unreasonable in concluding that the broadcast of the jokes and attendant remarks did not constitute the discussion of a controversy of public importance.

However, we believe an additional comment is appropriate here. Programs containing criticism, ridicule or humor concerning the religious beliefs, race or national background of persons or groups are sometimes the subjects of complaints received by the Commission.[2] Such broadcast matter, however offensive is may sometimes be, also enjoys the protection of the Constitutional guarantees of free speech. As the Commission stated, in part, in its Memorandum Opinion and Order of January 22, 1964, concerning the license renewal of the *Pacifica Foundation* stations (36 FCC 147, 149):

> We recognize that as shown by the complaints here, such provocative programming as here involved may offend some listeners. But this does not mean that those offended have the right, through the Commission's licensing power, to rule such programming off the airwaves. Were this the case, only the wholly inoffensive, the bland, could gain access to the radio microphone or TV camera. No such drastic curtailment can be countenanced under the Constitution, the Communications Act, or the Commission's policy, which has consistently sought to insure "the maintenance of radio and television as a medium of freedom of speech and freedom of expression for the people of the Nation as a whole" (*Editorializing Report*, 13 FCC 1246, 1248). In saying this, we do not mean to indicate that those

---

[1] You submit the solicited statements of some 80 sixth-grade students purporting to show anti-Polish bias. However, a number of these letters expressed the writers' disapproval of the image projected by the Polish jokes.

[2] In fiscal year 1973, the Commission received some 333 complaints which charged racial or ethnic criticism, ridicule or degradations in the television field.

who have complained about the foregoing programs are in the wrong as to the worth of these programs and should listen to them. This is a matter solely for determination by the individual listeners. Our function, we stress, is not to pass on the merits of the program—to commend or to frown.

Since we have determined that the network was not unreasonable in concluding that no controversial issue of public importance was involved, the broadcast of the Polish jokes could not constitute, under the Commission's rules, a personal attack. In order for the personal attack rule to be applicable, the attack must occur during the discussion of a controversial issue of public importance. Section 73.123(a) of the Commission's Rules and Regulations. Even had a controversial issue of public importance been involved here, it does not appear that these jokes and attendant remarks could have constituted a personal attack under the Commission's rules. The statement of a particular view, however strongly or forcefully made, does not necessarily constitute a personal attack. *The Port of New York Authority*, 25 FCC 2d 417 (1970). To qualify under the Commission's rule, the attack must reflect upon the "honesty, character, integrity or like personal qualities" of a person or group, and not merely reflect upon ability, knowledge or like intellectual or motor skills.

In view of the above, no further consideration of your complaint by the Commission appears to be warranted.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

William B. Ray,
Chief, Complaints and Compliance Division,
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
MASSACHUSETTS BLACK CAUCUS, BOSTON, MASS.
Concerning Alleged Personal Attack Re Station WNAC–TV

SEPTEMBER 24, 1973.

Hon. DORIS BUNTE,
Chairperson, Massachusetts Black Caucus, Commonwealth of Massachusetts, House of Representatives, Boston, Mass. 02133

DEAR MS. BUNTE: This is in reply to your letter dated August 28, 1973, in which you state that Station WNAC–TV, Boston, Massachusetts, on August 14 and 15, 1973, broadcast a personal attack against you. You further state that the licensee did not notify you of the attack, and you inquire whether the station, or the commentator involved, may be required to issue a public apology. You enclose a copy of a letter to you from Mr. William H. Hahn, the licensee's Vice President, inviting you to discuss with the licensee's news director an appearance on one of WNAC–TV's programs to broadcast your views.

In regard to your statement that the licensee's commentary constituted a personal attack, a copy of the personal attack rules is enclosed. Please note that mere mention of a person or group, or even certain types of unfavorable references thereto, does not constitute a personal attack as defined by the Commission. A personal attack, for the purposes of the Commission's Rules, is an attack "upon the honesty, character, integrity or like personal qualities of an identified person or group." Rulings of the Commission have distinguished between remarks which question or dispute the judgment or wisdom of a particular individual or group, and those which are an attack upon a person or group's honesty, character, or integrity. Only the latter constitutes personal attacks within the meaning of the Rules. As the Commission stated in *The Port of New York Authority*, 25 FCC 2d 417, 418 (1970): "We have made clear before that strong disagreement, even vehemently expressed, does not constitute a personal attack in the absence of an attack upon character or integrity." Review of the commentary in question, which you enclosed with your complaint, indicates that although the commentator characterized you as a "confirmed nuisance," and "obnoxious," and took issue with your position concerning the president of Roxbury Community College, such statements did not attack or otherwise impugn your honesty, character or integrity, and therefore, did not constitute personal attacks as defined by the Rules.

In regard to your request that the licensee be required to broadcast a public apology, the selection and presentation of specific program material are responsibilities of the station licensee, and under the provisions of Section 326 of the Communications Act, the Commission is specifically prohibited from censoring broadcast material. The Commission may neither prohibit nor compel the broadcast of particular material. However, the fairness doctrine may be applicable to the programming about which you complain. Enclosed is a form letter which explains the fairness doctrine and sets forth the procedures to follow and the information complainant must provide the Commission in filing fairness doctrine complaints.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY,
Chief, Complaints and Compliance Division,
for Chief, Broadcast Bureau.

F.C.C. 73-972

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of
QUALITION AERO, INC.
For Renewal of License of Radio Station
KNUI, Kahului, Hawaii
} BR-4223

SEPTEMBER 19, 1973.

Certified Mail—Return Receipt Requested

GALEN POTTER,
Vice President, Qualition Aero, Inc., Radio Station KNUI, 3000 North Clybourn Avenue, Burbank, Calif. 91505

DEAR MR. POTTER: This is in reference to your license renewal application for standard broadcast Station KNUI, Kahului, Hawaii (BR-4223).

As you know, on October 18, 1972, Station KNUI was granted a short-term renewal for the period ending October 1, 1973, because of your failure to exercise adequate supervision and control over a station-sponsored contest. We have reviewed your operation since October 1972, and find no evidence of any of the conduct for which the short-term license was granted. We also note that you have effected practices and procedures designed to preclude recurrence of the aforenoted misconduct.

In view of the above, we find that you are legally, technically, financially and otherwise qualified to be a Commission licensee and that grant of your present application would serve the public interest, convenience and necessity.

Accordingly, the application for renewal of the license for Station KNUI, Kahului, Hawaii, is granted for the remainder of the regular renewal period for Hawaii stations—i.e., February 1, 1975.

Commissioner Robert E. Lee absent.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73R-347

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of RED LION BROADCASTING CO., INC., RED LION, PA. For Construction Permit for New Television Broadcast Station	Docket No. 18136 File No. BPCT-3678

MEMORANDUM OPINION AND ORDER

(Adopted October 3, 1973; Released October 5, 1973)

BY THE REVIEW BOARD:

1. This case involves the application of Red Lion Broadcasting Co., Inc. (Red Lion) for a construction permit to operate a new UHF television broadcast station on Channel 49, Red Lion, Pennsylvania. By Order, FCC 68-453, 33 FR 6794, published May 3, 1968, the Commission designated the application for hearing, specifically noting that John H. Norris, vice-president, director, prospective general manager and 10% stockholder of Red Lion, was also president, general manager and a director of Brandywine-Main Line Radio, Inc. (Brandywine), licensee of WXUR-AM and FM, Media, Pennsylvania. The Commission further noted that it had been unable to grant the applications for renewal of WXUR-AM and FM because of questions relating, *inter alia*, to the Fairness Doctrine, and that it had, therefore, designated the applications for hearing in Docket No. 17141.[1] In light of John H. Norris' close relationship with both Brandywine [2] and Red Lion, the Commission concluded that the questions at issue in Docket No. 17141 were relevant to this proceeding and, therefore, held this proceeding in abeyance until the completion of the record in Docket No. 17141 [3] when the facts adduced would be available for consideration in this proceeding. Accordingly, in addition to naming John H. Norris as party respondent, the Commission designated the following issues:

> 1. To determine the record of John H. Norris in the operation of Stations WXUR and WXUR-FM, Media, Pennsylvania, as reflected by the evidence in Docket No. 17141.
>
> 2. To determine whether in light of Docket No. 17141, the Commission can rely upon the applicant's representations in its television application that it will comply with the Fairness Doctrine.
>
> 3. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether a grant of the applications would serve the public interest, convenience and necessity.

---

[1] FCC 67-99, 9 RR 2d 126 (1967).

[2] John H. Norris was also a director of Faith Theological Seminary, Inc., which owns all of the stock in Brandywine.

[3] The Commission in Docket No. 17141 denied the renewal applications of WXUR-AM and FM, 24 FCC 2d 18, 19 RR 2d 433 (1970), and 27 FCC 2d 565, 21 RR 2d 22 (1971). The Court of Appeals affirmed the Commission's Decision in 473 F.2d 16, 25 RR 2d 2010 (1972), and the Supreme Court denied cert. on May 29, 1973, 37 L. Ed. 149.

2. Subsequently, at a prehearing conference held on July 17, 1973, the Presiding Judge stated that he interpreted the scope of issues 1 and 2 as being limited strictly to that evidence which had already been adduced in Docket No. 17141, and that the evidentiary phase of this proceeding would be concluded by incorporation of that record into this proceeding. By Order, FCC 73M-837, released on July 19, 1973, the Administrative Law Judge formalized the July 17, 1973, ruling and authorized an appeal. Now before the Review Board[4] is an appeal from that ruling, filed July 25, 1973, by Red Lion and John H. Norris, and a request that the language of the issues be clarified or modified by deleting the references to Docket No. 17141.[5]

3. In support of its appeal, appellants contend that John H. Norris, majority and controlling stockholder, president and director of Red Lion had no ownership interests or official connection with the applicant in Docket No. 17141, and that John H. Norris, minority stockholder and party respondent, was only one of eleven directors of Faith Theological Seminary, owner of Brandywine. Furthermore, they contend that neither stockholder was a party to the Docket No. 17141 proceeding. Thus, appellants argue that their statutory right to a full hearing would be violated if evidence in a different proceeding involving different parties were to be used as a basis for the findings and conclusions in this proceeding without according the applicant and respondent an opportunity to present their own direct and rebuttal evidence. Appellants further point out that the designation Order says that the record in Docket No. 17141 would be made "part of the record in this proceeding" and argue that the language cannot be interpreted to mean that the record from Docket No. 17141 would constitute the entire record. Finally, appellants note that the designation Order makes John H. Norris a party to the proceeding and that it orders Red Lion and John H. Norris to state in their notice of appearance whether they will "present evidence on the issues specified". Appellants argue that this language must mean something and that to construe the issues to be limited to the record from Docket No. 17141, as the Administrative Law Judge has done, is to render the language in the designation Order a nullity.[6]

4. In opposition, the Broadcast Bureau asserts that the appellants' appeal is, in effect, a request for modification of the issues to the extent that it seeks deletion of all reference to Docket No. 17141; thus, since appellants have been on notice as to the conclusionary nature of the issues since the time of designation, the Bureau urges that the appeal be denied because of gross untimeliness.[7] The Bureau also contends that appellants' appeal should be denied insofar as it relates to the scope of the issues, because the subject of John H. Norris' operation of

---

[4] Also before the Review Board are the following related pleadings: (a) opposition, filed August 6, 1973, by the Broadcast Bureau; and (b) reply, filed August 8, 1973, by Red Lion.

[5] Appellants also request that the second ordering clause of the designation Order be clarified or modified so that it will not restrict the authority of the Administrative Law Judge in making evidentiary rulings concerning Docket No. 17141.

[6] Appellants also contend that to interpret the designation Order as the Administrative Law Judge had done would divest the Administrative Law Judge of virtually every function vested in hearing officers under the Administrative Procedure Act, particularly the making of an Initial Decision based upon his evaluation of the evidence.

[7] The designation Order was published in the Federal Register on May 3, 1968. Section 1.229(b) of the Commission's Rules requires that motions to change the issues be filed no later than 15 days after the Commission's Order designating the hearing has been published in the Federal Register, unless good cause is shown.

WXUR–AM and FM was fully explored and litigated in the hearing in Docket No. 17141. In this connection, the Bureau states that John H. Norris was a party in Docket No. 17141 to the extent that he was president, director and general manager of WXUR–AM and FM. Finally, the Bureau contends that the incorporation of a prior hearing record in a pending proceeding for purposes of evaluating an applicant's qualifications is not novel, citing *Gordon County Broadcasting Co.* (*WCGA*), 144 U.S. App. D.C. 334, 446 F.2d 1335, 22 RR 2d 2042 (1971).

5. Appellants' request that Issues 1 and 2 be modified by deleting references to Docket No. 17141 will be denied. It is well established that where, as in the instant designation Order, the Commission has specifically considered and given a reasoned analysis on a particular matter, the Review Board will not substitute its judgment for that of the Commission. See *Atlantic Broadcasting Company* (*WUST*), 5 FCC 2d 717, 8 RR 2d 991 (1966); and *Fidelity Radio, Inc.*, 1 FCC 2d 661, 6 RR 2d 140 (1965). However, the Review Board does not agree that the evidence to be adduced under Issues 1 and 2 shall be limited to the incorporation of the evidence adduced in Docket No. 17141 and the representations of the applicant that it will comply with the Fairness Doctrine.[8] In our view, there is no impediment[9] to the introduction of additional or mitigating (but not conflicting) evidence relating to the record of John H. Norris in the operation of Stations WXUR–AM and FM.[10] Rather, the adduction of a complete record in this regard would provide an optimum basis for assessing the qualifications of Red Lion to be a Commission licensee. Although it is essential to ensure that the parties are accorded a full and fair hearing on the record, it is also necessary to avoid unnecessary and wasteful duplication of the Commission's hearing procedures. In this regard, it should be noted that the parties to this proceeding are estopped from collaterally attacking the ultimate findings and conclusions reached in Docket No. 17141.[11] Similarly, to the extent that facts were adduced in that hearing concerning the role of John H. Norris in the operation of Station WXUR–AM and FM these facts may not be controverted or relitigated. The Board is of the view that, although the parties and issues in both proceedings are not precisely identical, there is sufficient privity between Norris and each of the applicants, as well as identity of interest, to appropriately utilize the record in Docket No. 17141 in making the determination required in this proceeding.

6. Accordingly, IT IS ORDERED, That the appeal from the Administrative Law Judge's adverse ruling filed July 25, 1973, by Red Lion Broadcasting Co., Inc. and John H. Norris IS GRANTED to the extent indicated herein, and IS DENIED in all other respects.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

---

[8] The appeal is timely in this particular respect, inasmuch as it seeks to overturn a ruling made by the Presiding Judge, rather than modification of the designation Order.

[9] In this connection, the Commission stated:

"We will, therefore, provide in this order that when the record is completed in Docket No. 17141, it will become a part of the record in this proceeding."

[10] *Cf. Commissioner of Internal Revenue* v. *Sunnen*, 333 U.S. 591 (1948); see also Davis, *Administrative Law*, p. 350 (1965).

[11] *Cf. Gordon County Broadcasting Co.* (*WCGA*), *supra.*

F.C.C. 73-1005

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re
STAUNTON VIDEO CORP., STAUNTON, VA.
Request for Special Relief
CSR-346
VA 049

MEMORANDUM OPINION AND ORDER

(Adopted September 26, 1973; Released October 4, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. On March 30, 1973, Staunton Video Corporation, operator of a cable television system at Staunton, Virginia, filed a "Petition for Special Relief" (CSR-346) requesting a waiver of Section 76.59 (a)(1) of the Commission's Rules[1] insofar as it required Staunton Video to carry the signal of Station WVIR-TV, Charlottesville, Virginia. On April 30, 1973, Virginia Broadcasting Corporation, licensee of Station WVIR-TV, Charlottesville, Virginia, filed its "Opposition of Virginia Broadcasting Corporation, licensee of WVIR-TV, Channel 29, Charlottesville, Virginia." Staunton Video has filed no Reply.

2. Staunton, Virginia is located within the Harrisonburg and Charlottesville, Virginia markets, both of which are smaller markets. Staunton Video operates a twelve-channel cable television system which carries the following broadcast television signals:

WVPT (Educ.), Staunton, Virginia
WSVA-TV (ABC/NBC), Harrisonburg, Virginia
WLVA-TV (ABC), Lynchburg, Virginia
WTVR-TV (CBS), Richmond, Virginia
WWBT (NBC), Richmond, Virginia
WXEX-TV (ABC), Petersburg, Virginia
WRC-TV (NBC), Washington, D.C.
WMAL-TV (ABC), Washington, D.C.
WTOP-TV (CBS), Washington, D.C.
WTTG (Ind.), Washington, D.C.
WMAR-TV (CBS), Baltimore, Maryland

Staunton, Virginia, is located within thirty to thirty-five miles of Charlottesville, Virginia. WVIR-TV does not, however, place an actual Grade B contour over Staunton, Virginia. Although the parties' engineering studies are in conflict, neither one indicates that WVIR-TV achieves an actual Grade B contour.

3. Although Staunton Video admits that it is within WVIR-TV's

---

[1] Section 76.59(a)(1) provides that systems must carry:
"Television broadcast stations within whose specified zone the community of the system is located, in whole or in part;"

specified zone, it argues that Section 76.59(a)(1)'s mandatory carriage requirement should be waived. It asserts that carriage of WVIR–TV would require it to delete a grandfathered signal, since it claims that expansion of its channel capacity is not feasible. Deletion of a signal would not be in the public interest, Staunton Video argues, since it would disrupt existing service to the public. We reject Staunton Video's arguments for the following reasons.

4. WVIR–TV's failure to place a Grade B contour over Staunton, Virginia, in no way relieves Staunton Video of its obligation to carry the station pursuant to Section 76.59(a)(1). The rule expressly speaks in the alternative. Thus, a cable television system must carry a signal if the system is located within either the specified zone or the Grade B contour of the station. Indeed, we carefully tailored the specified zone carriage requirement to protect UHF stations such as WVIR–TV, which have comparatively small actual Grade B contours. In Paragraph 82 of the *Cable Television Report and Order* we noted that the specified zone carriage requirement would insure that "less powerful stations * * * will be capable of extending their coverage into the area that we have determined is generally necessary for the development of broadcast stations."

5. This conclusion is consistent with our holding in *Community Service, Inc.*, 21 FCC 2d 719 (1970). There we required a television station to install a translator as a condition to receiving exclusivity protection, since the station did not place an actual Grade B contour over the cable system's community. *Community Service* involved a far different situation, however, than this case. It arose under earlier rules, which lacked any counterpart to the specified zone carriage requirement. See *Bluefield Television Cable, Inc.*, FCC 67–1247, 10 FCC 2d 713; *Shen-Heights TV Association*, FCC 68–168, 11 FCC 2d 814, 818. Though *Community Service* made eminently good sense under the earlier rules, its continued application would create an implied exception to the specified zone carriage requirement. Moreover, its rationale is not helpful in this case, since Staunton, Virginia, is located within the West Virginia Quiet Zone pursuant to Section 73.623(a) of the Commission's Rules. Accordingly, WVIR–TV's ability to place a translator in Staunton, Virginia, is questionable.

6. Staunton Video is not relieved of its obligation to carry WVIR–TV by Section 76.65's provision that Section 76.59 does not "require the deletion of any television broadcast or translator signals * * *"[2] Section 76.65 does not *per se* "require" a cable television system to delete an authorized signal in order to afford mandatory carriage. Instead, it implicitly gives the system a choice between deleting an authorized signal and expanding its channel capacity.

---

[2] Section 76.65 provides that:

"The provisions of §§ 76.57, 76.59, 76.61 and 76.63 shall not be deemed to require the deletion of any television broadcast or translator signals which a cable television system was authorized to carry or was lawfully carrying prior to March 31, 1972: *Provided, however*, That if carriage of a signal has been limited by Commission order to discrete areas of a community, any expansion of service will be subject to the appropriate provisions of this subpart. If a cable television system in a community is authorized to carry signals, either by virtue of specific Commission authorization or otherwise, any other cable television system already operating or subsequently commencing operations in the same community may carry the same signals. (Any such new system shall, before instituting service, obtain a certificate of compliance, pursuant to § 76.11.)."

7. Section 76.11 normally would require Staunton Video to secure a Certificate of Compliance in order to carry WVIR-TV. We have recognized before that this requirement is onerous to television station and cable system alike, however, where a signal is entitled to mandatory carriage. *Telegram to Wolverine Cablevision, Inc.*, FCC 72-796, —— FCC 2d ——. Accordingly, we *sua sponte* waive compliance with Section 76.11 for Staunton Video as to carriage of WVIR-TV; provided, however, that Staunton Video will be expected to file an application for Certificate of Compliance within thirty (30) days of its initial carriage of WVIR-TV.

Accordingly, IT IS ORDERED, That the "Petition for Special Relief" (CSR-346) filed by Staunton Video Corporation IS DENIED. In view of our disposition of this matter, we expect Staunton Video Corporation to take prompt action (in no event more than thirty (30) days of the release date of this Memorandum Opinion and Order) to carry the signal of Station WVIR-TV on its cable television system at Staunton, Virginia.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary*.

F.C.C. 73-971

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re
TELEPROMPTER CABLE COMMUNICATIONS CORP., RICHLAND, WASH.
Request for Declaratory Ruling
Request for Order To Show Cause

CSR-289 (WA140)
CSC-33 (WA140)

MEMORANDUM OPINION AND ORDER

(Adopted September 19, 1973; Released September 26, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE, ABSENT.

1. On October 25, 1972, TelePrompTer Cable Communications Corporation, operator of a cable television system at Richland, Washington, filed a "Request for Declaratory Ruling" seeking a ruling on the manner in which it is required to carry the signal of KVEW pursuant to Section 76.55 of the Commission's Rules.[1] On December 5, 1972, Apple Valley Broadcasting, Inc., licensee of Television Broadcast Station KVEW, Kennewick, Washington, filed a "Response to and Motion to Dismiss Request for Declaratory Ruling" and a "Petition for Commission Issuance of a Cease and Desist Order and for Other Affirmative Relief." On January 4, 1973, TelePrompTer filed a "Reply to Motion to Dismiss Request for Declaratory Ruling and Opposition to Petition for Commission Issuance of Cease and Desist Order and for Other Affirmative Relief." [2]

2. TelePromptTer's Richland, Washington cable television system has a 12 channel capacity and carries the following television signals:

KNDU (NBC), Kennewick, Washington
KEPR-TV (CBS), Kennewick, Washington
KVEW (ABC), Kennewick, Washington
KREM-TV (ABC), Spokane, Washington
KXLY-TV (CBS), Spokane, Washington
KHQ-TV (NBC), Spokane, Washington
KTNT-TV (Ind.), Tacoma, Washington

---

[1] Section 76.55 provides in relevant parts:

(a)(1) The signal shall be carried without material degradation in quality. . . .

(2) The signal shall, on request of the station licensee or permittee, be carried on the system on the channel number on which the station is transmitting, except where technically infeasible;

(3) The signal shall, on request of the station licensee or permittee, be carried on the system on no more than one channel.

[2] On December 20, 1972, King Broadcasting Company, licensee of VHF station KREM-TV (ABC), Spokane, Washington, filed an "Opposition to Petition for Commission Issuance of Cease and Desist Order and Other Affirmative Relief" and "Comments on Motion to Dismiss Request for Declaratory Ruling". Apple Valley originally insisted that KVEW should be carried on the cable television system channel which carried KREM-TV, channel 2, but has since withdrawn from that position.

KCTS-TV (Educ.), Seattle, Washington
KWSU-TV (Educ.), Pullman, Washington
CHEK-TV (CBC), Victoria, British Columbia

TelePrompTer carries the signal of KVEW, Channel 42, on Channel 12 of its cable television system. Apple Valley argues that KVEW is entitled to be carried on a lower channel, i.e., Channels 2 through 6. In this regard, Apple Valley argues that dial position is an important ingredient of station acceptance and recognition and that KVEW suffers a competitive disadvantage by being carried on a high channel, because the other two local UHF television stations are carried on lower channels.[3]

3. We deal with TelePrompTer's "Request for a Declaratory Ruling" and Apple Valley's "Petition for an Order to Show Cause" jointly. TelePrompTer cannot carry KVEW on the channel number on which it transmits because KVEW transmits on Channel 42. Therefore, TelePrompTer's only obligation to KVEW as to the manner in which its signal is carried is to accord it single channel carriage without materially degrading its signal quality.[4] TelePrompTer does this.

In view of the foregoing, the Commission finds that issuance of the requested Order to Show Cause would not be consistent with the public interest and that grant of the "Request for Declaratory Order" would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Request for Declaratory Ruling" filed by TelePrompTer Cable Communications Corporation IS GRANTED.

IT IS FURTHER ORDERED, That the "Petition for Commission Issuance of Cease and Desist Order and Other Affrmative Relief" filed by Apple Valley Broadcasting, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

---

[3] The other two UHF television stations serving the Richland-Pasco-Kennewick, Washington market are KEPR-TV (CBS), Channel 19, and KNDU-TV (NBC), channel 25. They are carried on Channels 3 and 5.

[4] Section 76.55(a)(1)-(3), n. 1.

F.C.C. 73R-346

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of WNAR, INC., NORRISTOWN, PA. For Construction Permit	Docket No. 14952 File No. BP-12902

ORDER

(Adopted October 3, 1973; Released October 4, 1973)

BY THE REVIEW BOARD: BOARD MEMBER KESSLER DISSENTING AND VOTING FOR CERTIFICATION.

1. The Review Board having under consideration: (a) its Decision in this proceeding (41 FCC 2d 110), released June 5, 1973, denying the above-captioned application; (b) the petition for reconsideration and/or request for certification to the Commission, filed by the applicant on July 5, 1973; and (c) the Broadcast Bureau's opposition to said petition, filed on July 18, 1973;

2. IT APPEARING, That the findings in the Decision in question do not conflict with the record evidence and the conclusions based thereon are consistent with precedent; that all evidence has been considered by the Review Board and no reasons have been advanced to require a new or different interpretation of that evidence; that petitioner has not demonstrated any error or omission which would warrant change in the Board's determination; but that, nevertheless, the Board has again reviewed the record and the arguments of the parties and finds no reason to depart from or disturb its findings or conclusions; and

3. IT FURTHER APPEARING, That policy and precedent are adequate for resolution of the issue as designated by the Commission (6 FCC 2d 718); that having once disposed of the matter, we do not believe the public interest would be served by a procedure which might further delay resolution of this case; and that purported errors of policy and law should be presented to the Commission in an application for review;

4. IT IS ORDERED, That the petition for reconsideration and/or request for certification to the Commission, filed July 5, 1973, by WNAR, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by
SHERMAN M. WOLF D.B.A. ZIPCALL, AND COLGAN COMMUNICATIONS, INC.
For approval of an Inter-Carrier Operating Agreement

SEPTEMBER 19, 1973.

Attention: Arthur Blooston, Esq.
JEREMIAH COURTNEY, Esq.,
2120 L Street NW.,
Washington, D.C. 20037

GENTLEMEN: On September 18, 1972, an Inter-Carrier Operating Agreement between Sherman M. Wolf d/b/as Zipcall (Zipcall) and Colgan Communications, Inc. (Colgan) was submitted to the Commission for approval. Since the agreement proposes a type of operation which has not been addressed by the Commission previously, and since several similar proposals have been advanced, we have decided to respond formally.

Both Zipcall and Colgan are licensees in the Domestic Public Land Mobile Radio Service (DPLMRS), in eastern Massachusetts. Zipcall has its primary area of operation in and around Boston, while Colgan serves the Cape Cod area. Zipcall has filed applications to add new paging facilities in the Cape Cod/Barnstable area, and one of these applications is electrically mutually exclusive with an application of Colgan. Both parties wish to expand their areas of operation while avoiding comparative hearings, etc. Accordingly, they have filed this agreement, by which Colgan will dismiss its mutually exclusive application and make no objection to Zipcall's applications for new base stations in and about Cape Cod. Zipcall, in turn, will grant Colgan the right to serve subscribers through the facilities of Zipcall's applications for new base stations in and about Cape Cod. Zipcall, in turn, will grant Colgan the right to serve subscribers through the facilities of Zipcall's station KCB890. Colgan will pay Zipcall for each subscriber served by Zipcall but will provide the paging unit, solicit customers independently, and be responsible for its own billing. All subscribers receiving service through the facilities of Station KCB890, whether obtained by Zipcall or Colgan, will be charged the same rates as if they subscribed directly to Zipcall, the licensee of the base station.

This agreement, upon approval, will result in subscribers to either of these carriers receiving paging service over a much wider area than they can at present, and does not appear to involve anticompetitive conduct contrary to the public interest. In view of this, we conclude that approval of the agreement will serve the public interest, provided that all subscribers are charged the same rates as if they subscribed directly to Zipcall, and provided further that subscribers are informed of the source of that service. Furthermore, the parties should understand that our approval of their agreement does not constitute in any way an approval of any lessening of their competitive activities, and that we will reexamine the matter if such a lessening of normal competitive activities should appear to be the result of their agreement. Accordingly, the agreement is hereby approved.

This action should not be construed as a blanket endorsement of this type of operation. Future agreements of this nature will be reviewed on a case-by-case basis.

A copy of this letter will be associated with the files of Station KCB890 for future reference.

Commissioner Robert E. Lee absent; Commissioner Johnson concurring in the result.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*